

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912

No. 349-323

THE CITY OF SAULT STE MARIE, ANDREW J. SHORT,
MAYOR, ET AL, APPELLANTS,

INTERNATIONAL TRANSIT COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MICHIGAN.

FILED AUGUST 8, 1912.

(23,324)

(23,324)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 749.

THE CITY OF SAULT STE. MARIE, ANDREW J. SHORT,
MAYOR, ET AL., APPELLANTS,

vs.

INTERNATIONAL TRANSIT COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MICHIGAN.

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1 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

VS.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

To the Honorable Circuit Court of the United States for the Western District of Michigan:

The International Transit Company, complainant herein, brings this Bill of Complaint against the City of Sault Ste. Marie, a municipal corporation, of the State of Michigan, and Andrew J. Short, Andrew J. Eaton and Edgar J. Swart, respectively, Mayor, Recorder and Chief of Police of said City, defendants herein, and shows:

First. Your orator is a joint stock corporation organized and existing under the laws of the Province of Ontario, Dominion of Canada, being incorporated under letters patent issued to it in the name and by the authority of the King of Great Britain and Ireland, by the Secretary of said Province of Ontario, and thereby is fully authorized to acquire, construct, own and navigate vessels operated by steam or otherwise, and has other and further powers
2 as in and by said letters patent will more fully appear, and reference to which is hereby made. Your orator is a resident and citizen of the Dominion of Canada and a subject of the Kingdom of Great Britain and Ireland.

Second. The City of Sault Ste. Marie is a municipal corporation organized under the laws of the State of Michigan. Andrew J. Short, Andrew J. Eaton and Edgar J. Swart are, respectively, the duly elected, qualified and acting Mayor, Recorder and Chief of Police of said City, and each is a citizen of the State of Michigan and a resident of the Western District, Northern Division, of said State.

Third. Your orator now owns, maintains and navigates two steam vessels, of Canadian Register, upon the St. Mary's River, between the aforesaid City of Sault Ste. Marie and the City of Sault Ste. Marie in the Province of Ontario, Dominion of Canada. Said cities are upon opposite sides of said St. Mary's River, which is a stream navigable for and navigated by large vessels, and constitutes the international boundary between the United States of America and the Dominion of Canada.

Your orator operates said vessels between the aforesaid cities at regular intervals, and by means thereof engages in the transportation of passengers and freight of various kinds and descriptions from the Dominion of Canada to the United States and from the United States to the Dominion of Canada, which said commerce is international or foreign commerce.

Your orator operates its steamers between its private wharf in the

Marie, Michigan, adopted an ordinance, a copy of which is attached to this bill of complaint, marked "Exhibit A," and made a part hereof. Said ordinance forbids any person or corporation to operate a ferry boat or engage in the business of carrying or transporting persons or property from the City of Sault Ste. Marie, Michigan, to the opposite shore, without first obtaining a license therefor from the Mayor of said City and otherwise complying with the provisions of said ordinance, and requires the payment of a license fee of Fifty Dollars (\$50.00) annually for each boat so engaged, other than a launch, sail or row boat. Said ordinance also requires an application to be made to said Mayor for such license, which said application shall contain a schedule of rates of ferriage for persons and property proposed to be charged by the applicant, across the St. Mary's River at the place aforesaid. Said ordinance further provides that

5 any such ferry shall leave its ferry dock within said City of Sault Ste. Marie, Michigan, for such transportation at least once every twenty (20) minutes between the hours of 6:00 o'clock a. m. and 10:30 o'clock p. m., and between the 15th day of April and the 15th day of November of each year. Said ordinance also provides a maximum schedule of rates for the transportation of passengers, animals or merchandise, which said schedule is different from and materially less than the schedule which your orator is authorized to charge under the license granted it by the Dominion of Canada, and much less than the schedule of transportation charges which it has been receiving and which it is now receiving under its license from the Dominion of Canada. Said ordinance further provides that the Mayor of said City of Sault Ste. Marie, Michigan, is authorized to revoke any license granted under the ordinance whenever he shall be satisfied that any grantee under any such license has intentionally violated any of the provisions of the ordinance, and that the operation of any ferry within the limits of the City of Sault Ste. Marie, Michigan, after such notice of violation shall be deemed a violation of said ordinance, and any person violating the same shall be punished by a fine not exceeding one hundred dollars and costs of prosecution, or by imprisonment in the jail of the City of Sault Ste. Marie, Michigan, or the jail of the County of Chippewa, Michigan, not exceeding ninety days, or both such fine and imprisonment in the discretion of the Court, which might be called upon to impose sentence in a prosecution thereunder.

Seventh. Your orator further shows that said ordinance has been approved by the Mayor and has been duly published.

6 Eighth. Your orator further shows that the transportation of persons and property across the St. Mary's River in the manner above mentioned is commerce, foreign or international in character, and as such is within the exclusive regulation and control of the Congress of the United States and control thereof is expressly reserved to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States, and that such Commerce is therefore free from control or regulation by the City of Sault Ste Marie, Michigan, and particularly the ordinance adopted by said municipality hereinbefore set forth.

Ninth. Your orator further shows that the City of Sault Ste Marie, Michigan, has threatened your orator that unless a license is obtained by your orator from said City, and the terms of the aforesaid ordinance fully complied with your orator will be proceeded against in the criminal courts of said City for the violation thereof; and upon, to-wit, the 27th day of October, 1911, Edgar J. Swart, one of the defendants herein, made complaint before Herbert W. Runnels, Justice of the Peace in and for the City of Sault Ste Marie, aforesaid, to the effect that Henry A. Pocock, captain of one of the steamers belonging to your orator and called the "Bawating" being upon the St. Mary's River, and being in charge of said steamer, and that said Pocock did transport upon said ferry-boat persons and property from the City of Sault Ste Marie, Michigan, upon and across the St. Mary's River to the opposite shore, being the Province of Ontario, Dominion of Canada, without first having obtained a license so to do from said City, and without a license having been applied for or issued for the operation of said boat upon the St. Mary's River, contrary to the ordinance above referred to, copy of which is attached hereto marked "Exhibit A."

7 Tenth. Your orator further shows that upon said complaint being made, a warrant for the arrest of the said Pocock was issued by said justice; that he was arrested and tried before said Justice of the Peace, and sentenced to pay a fine in the sum of \$50 and the costs of said proceeding by the second day of November, 1911, and upon default thereof that he be imprisoned in the jail of Chippewa County for a period of thirty days from and including the first day of November.

Eleventh. Your orator further shows that the said ordinance is void and contrary to the Constitution of the United States of America and Article 1, Section 8, thereof, and that the defendant City of Sault Ste Marie threatens to subject your orator to further criminal prosecution unless said ordinance is complied with, and that unless restrained and enjoined by this Court, your orator, its officers and agents, will be liable to a multiplicity of criminal prosecutions for alleged violation of said ordinance, and liable for the penalties prescribed by said ordinance, and its property rights will thereby be invaded and destroyed, and it will be, unless the defendants are restrained as herein prayed, called upon to defend various prosecutions under said ordinance, whereby your orator will suffer irreparable injury in its business. Your orator further shows that the individuals named as defendants herein are the officers of the City of Sault Ste Marie, Mich., charged with the duty of enforcing the said ordinance.

Twelfth. Your orator further shows that the volume of said international commerce carried on by it by means of the aforesaid steamers between the Dominion of Canada and the United States of America is substantial, and that the amount in controversy largely exceeds in value the sum of \$2,000, exclusive of interest and

8 costs, and that your orator is without adequate relief except in a court of equity, and to the end, therefore, that the defendants may, if they can, show why your orator should not have

the relief herein prayed, may make a full disclosure and discovery of all the matters aforesaid, and, according to their best knowledge, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived as to each of said defendants, and to the end that the defendants may be restrained from enforcing the provisions of said ordinance against your orator, or any of its officers, agents, servants or employees, by instituting criminal proceedings or prosecutions against them or any of them, for violation thereof, or any part thereof, your orator prays that a writ of injunction may issue out of and under the seal of this Honorable Court perpetually enjoining and restraining the said defendants from any further proceedings for the enforcement of the penalties prescribed in said ordinance, and that a provisional or preliminary injunction be issued restraining the said defendants in like manner pending this cause, and for such other and further relief as the equity of the case may require and as to this Honorable Court may seem meet.

May it please the Court to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpoena of the United States of America directed to the said defendants, and each of them, commanding them on a day certain to appear and answer unto this bill of Complaint, and to abide and to perform such order and decree in the premises as to the Court

9 shall seem proper and appropriate for the ends of this suit.

BOYNTON, McMILLAN, BODMAN, & TURNER,
Solicitors for Complainant.

704 Union Trust Building, Detroit, Mich.

UNITED STATES OF AMERICA,
Eastern District of Michigan,
County of Wayne, ss:

On this 29th day of November, 1911, before me personally appeared Henry E. Bodman, who being duly sworn, did depose and say that he is the duly authorized agent of the complainant in the foregoing bill of complaint named, duly authorized in the premises; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true, and that he makes this affidavit for and on behalf of the complainant because it is a non-resident of the State of Michigan and of the United States, and beyond the jurisdiction of this Court.

HENRY E. BODMAN.

Subscribed and sworn to before me this 29th day of November, A. D. 1911.

CHARLES L. FITCH,
Clerk U. S. Circuit Court,
West. Dist. Mich.

Ordinance No. CCXXIII.

An Ordinance to License and Regulate Ferries.

The City of Sault Ste. Marie ordains:

SEC. 1. No person, persons, or company shall operate a ferry boat, or engage in the business of carrying or transporting persons or property thereon from the City of Sault Ste Marie, Michigan, and across the St. Mary's River to the opposite shore, without first obtaining a license therefor from the Mayor and by otherwise complying with the provisions of this ordinance.

SEC. 2. The Mayor of said City is hereby empowered and authorized to issue and grant a license, as herein provided, to any person, persons, or company to keep, maintain and operate a ferry or ferries, for the carrying and transporting of persons and property from the City of Sault Ste Marie, Michigan, across the St. Mary's River to the opposite shore, on his, or their paying into the City treasury the sum of Fifty (\$50) dollars annually for each boat so engaged in the carrying and transportation of persons and property, and for each launch, sail boat or row boat used and operated as a ferry from said city to the opposite shore, the sum of five (\$5) dollars annually.

SEC. 3. Before any license shall be issued or granted by the Mayor as provided in section two (2) of this ordinance, the person, persons or company desiring the same, shall make application therefor to the Mayor in writing, which application shall state the name or names

11 of the boat or boats to be operated as a ferry or ferries, the place or places for receiving and landing persons and property by said ferry or ferries within said City, and which application shall also be signed by the person or persons desiring the license; and when said application is made by a company or corporation, said application shall be signed by the duly authorized officers of such company or corporation. Said application shall also contain a true and correct schedule of the rates of ferriage of persons and property proposed to be charged by the applicant within the territory prescribed by section two (2) of this Ordinance. And no license shall be issued or granted hereunder unless the application therefor shall conform to the provisions of this ordinance. And any licensee, to whom a license shall have been issued under this Ordinance, who shall fail or refuse to conduct his or their business of ferrying under said license in accordance with the terms, provisions and conditions contained in the application therefor, or contrary to the provision of this Ordinance, shall be deemed to have forfeited his or their rights to operate said ferry or ferries, and shall subject the offender to the same penalties herein provided for operating a ferry or ferries contrary to this Ordinance without a license therefor.

SEC. 4. Any ferry licensed under the provisions of this Ordinance, and engaged in transporting persons or property across St. Mary's River from points within the City of Sault Ste. Marie, Michigan, shall leave its ferry dock within said City for such transportation at least

once every twenty minutes between the hours of six o'clock A. M. and 10:30 o'clock P. M. standard time, and between the 15th day of April and the 15th day of November of each year; and the licensee of said ferry shall at all times keep and maintain in a conspicuous place at his or their ferry dock within said City, a notice of the time of the departure from said dock of such ferry or ferries.

SEC. 5. No gaming, drunkenness, quarreling, fighting, obscene or blasphemous language, or any rude, disorderly or immoral conduct shall be allowed on any such ferry.

SEC. 6. The ferriage of persons and property under this Ordinance from the licensee's established dock within said City to the opposite shore, shall not exceed the following rates: for a foot passenger, except children under five (5) years of age, five (5) cents; and children under five (5) years of age in charge of parents, or friends, shall be carried free; for a horse and custodian, twenty (20) cents; for one horse, fifteen (15) cents; for one horse and vehicle twenty-five (25) cents; for two horses and vehicle forty-five (45) cents; for each automobile and driver, forty-five (45) cents; for each head of cattle fifteen cents; for each sheep or hog five (5) cents; for each one hundred pounds baggage, five (5) cents; Provided however, that ferries licensed under this Ordinance, between the 15th day of November and the 1st day of May next following of each year, may charge not to exceed ten (10) cents for each foot passenger for transporting, as herein provided, during such period.

SEC. 7. Every person acting as agent, servant or employee of any person, persons or company operating a ferry, or in charge thereof, or under whose control or directions such ferry is operating or doing business, shall be subject to the same penalties as the licensee for a violation of any of the provisions of this Ordinance.

SEC. 8. The Mayor is hereby authorized to revoke the license granted to any person, persons or company under this Ordinance, whenever he shall be satisfied that such person, persons or company has intentionally violated any of the provisions of this Ordinance, such revocation to take effect upon written notice from the Mayor to such licensee that said license has been revoked: And any operation of such ferry or ferries, within the City limits, after such notice to such licensee, shall be deemed a violation of this ordinance.

SEC. 9. Any violation of, or failure to comply with the provisions of this Ordinance, shall be punished by a fine, not exceeding one hundred dollars and costs of prosecution, or by imprisonment in the City or County Jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the Court.

SEC. 10. This Ordinance shall take effect from and after its approval by the Mayor.

By Ald. McEvoy.

Supported by Ald. Lapish.

Whereas, Ordinance No. CCXXIII, being an ordinance to license and regulate ferries having been submitted, read and laid on the

table for one week at the regular meeting of the Common Council, held on the 18th day of September, 1911, in conformity with the provisions of the City Charter, now therefore

Be It Resolved, That Ordinance No. CCXXIII, entitled an Ordinance to license and regulate ferries be and the same is hereby adopted as read.

Carried. Yeas, Ald. Lapish, Moher, McEnvoy, Purvis, Ripley, Vanderhook, Weber, (7). Nays, None.

I hereby certify that the foregoing ordinance was by me presented to the Mayor of the City of Sault Ste. Marie on this
14 26th day of September, A. D. 1911, for his approval thereon.
A. J. EATON, *Recorder*.

I hereby approve the foregoing Ordinance this 26th day of September A. D. 1911.

A. J. SHORT, *Mayor*.

I hereby certify that the foregoing Ordinance was by me received from the Mayor of the City of Sault Ste. Marie, Michigan, on the 26th day of September, A. D. 1911, with his approval thereon.

A. J. EATON, *Recorder*.

I hereby certify that the foregoing Ordinance was published in the Soo Times a weekly newspaper printed and circulated in this City on the 30th day of September 1911.

A. J. EATON, *Recorder*.

Recorder's Certificate.

STATE OF MICHIGAN,

County of Chippewa, ss:

I, A. J. Eaton, Recorder of the City of Sault Ste. Marie, Michigan, do hereby certify that the foregoing is a true and correct copy of Ordinance No. CCXXIII and resolution adopting the same by the Common Council of said City, adopted at a meeting thereof held in the Council Chamber in the City Hall, in said City, on Monday, the 25th day of September 1911, as appears in the records of the Council proceedings, as compared by me.

Witness my hand and the seal of the City this 2nd day of October 1911.

[SEAL.]

A. J. EATON, *Recorder*.

15 Endorsed: No. 228. United States Circuit Court for the Western District of Michigan, Northern Division. In Equity. The International Transit Company, Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants. Bill of Complaint. Good for costs herein. Boynton, McMillan, Bodman & Turner. Filed November 29, 1911. Chas. L. Fitch, Clerk, Fred J. Schultheis, Deputy. Boynton, McMillan, Bodman & Turner, Solicitors for Complainant, 703 Union Trust Building, Detroit, Michigan.

- 16 The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

THE CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edward J. Swart, Chief of Police, Defendants.

Upon reading the bill of complaint of the International Transit Company, complainant herein, and upon consideration thereof, it is ordered that the said defendants show cause, if any they have, why a preliminary injunction should not issue as prayed for in said bill of complaint in this cause, before the Judges of this Court at the City of Grand Rapids in the Southern Division of said District, on the 13th day of December, A. D. 1911, at ten o'clock in the forenoon.

And it is further ordered that until the hearing upon this order to show cause, the said defendants and each of them be and hereby are restrained from any further proceedings for the enforcement of the penalties prescribed in the ordinance set forth in the bill of complaint.

And it is further ordered that the said complainant cause to be served on each of said defendants a copy of the bill of complaint in this cause and of this order, on or before the 4th day of December next.

Approved for entry November 29, A. D. 1911.

C. W. SESSIONS,

U. S. District Judge.

- 17 Endorsed: No. 228. The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity. International Transit Co. vs. City of Sault Ste. Marie, et al. Order to show cause. Filed Nov. 29, 1911. Chas. L. Fitch, Clerk. C. 462.

- 18 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Record-, and Edgar J. Swart, Chief of Police, Defendants.

To the Honorable Circuit Court of the United States for the Western District of Michigan:

The International Transit Company, complainant herein, hereby amends its bill of complaint against the City of Sault Ste. Marie, et al., by adding to the allegation set forth in Paragraph Eleventh of

the Bill of Complaint heretofore filed in the above cause, after the word "thereof" in the third line of said eleventh paragraph, the following:

"Your orator further shows that the said ordinance is void and contrary to the treaty between the United States and Great Britain, signed at Washington January 11th, 1909; ratified by the President of the United States April 1st, 1910; ratification exchanged at Washington May 5th, 1910; proclaimed May 13th, 1910, by which said treaty it was declared that the navigable boundary waters between the United States and the Dominion of Canada should forever continue free and open for the purpose of commerce to the inhabitants and to the ships, vessels and boats of both countries."

BODMAN, McMILLAN, BODMAN & TURNER,
Solicitors for Complainant.

704 Union Trust Building, Detroit, Michigan.

19 UNITED STATES OF AMERICA,
Eastern District of Michigan,
County of Wayne, ss:

On this 28th day of December, 1911, before me personally appeared Henry E. Bodman, who, being duly sworn, did depose and say that he is the duly authorized agent of the complainant in the foregoing amendment to the Bill of Complaint named, duly authorized in the premises; that he has read the foregoing amendment to the Bill of Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true; and that he makes this affidavit for and on behalf of the complainant because it is a non-resident of the State of Michigan and of the United States and beyond the jurisdiction of this Court.

HENRY J. BODMAN.

Subscribed and sworn to before me this 28th day of December, A. D. 1911.

JOSEPH J. O'BRIEN,
Notary Public, Wayne County, Michigan.

My commission expires Aug. 12, 1913.

20 Endorsed: No. 228. United States Circuit Court for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants. Amendment to Bill of Complaint. Filed Dec. 29, 1911. Chas. L. Fitch, Clerk. Boynton, McMillan, Bodman & Turner Solicitors for Complainant. 704 Union Trust Building, Detroit, Michigan.

21 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

On motion of F. T. McDonald, City Attorney, and solicitor for the above named defendants, the Appearance of said defendants is hereby entered.

F. T. McDONALD,
City Attorney and Solicitor for Defendants.

Business Address: 407 Adams Bldg., Sault Ste. Marie, Mich.

22 Endorsed: No. 228. United States of America. The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Company, Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, Edgar J. Swart, Chief of Police, Defendants. Appearance of Defendants. Filed Jan. 2, 1912. Chas. L. Fitch, Deputy Clerk. F. T. McDonald, City Attorney and Solicitor for Def's.

23 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

The Joint Answer of the City of Sault Ste. Marie, a Municipal Corporation; Andrew J. Short, Its Mayor; Andrew J. Eaton, Its Recorder, and Edgar J. Swart, Its Chief of Police, Defendants Herein, to the Bill of Complaint of The International Transit Company, Complainant.

These defendants reserving all rights of exception to the many errors, imperfections and uncertainties in said Bill of Complaint contained, in bar of said action, or to the merits, or both, for answer thereto, or to so much thereof as they are advised it is material or necessary to make answer thereto, answering say:

First. These defendants neither admit nor deny the allegations contained in the first paragraph of said Bill, having no knowledge thereof, and leave complainant to its proof thereof.

Second. These defendants admit the allegations contained in the second paragraph of said Bill.

Third. Answering the third paragraph of said Bill of Complaint, these defendants admit that complainant owns, maintains and navigates two steam vessels upon St. Mary's River, between the City

of Sault Ste. Marie, Michigan, and the City of Sault Ste. Marie, Province of Ontario, Dominion of Canada, and that said cities are upon opposite sides of St. Mary's River, and that said river is a navigable stream and navigated by large vessels, and that complainant operates said vessels between the aforesaid City at regular intervals, and that by means thereof, it, complainant, engages in the transportation of passengers from the United States to the Dominion of Canada and from the Dominion of Canada to the United States. And these defendants further admit that neither of said vessels in said paragraph alleged touches at, or makes use of, for embarkation or debarkation of property or persons, any dock, wharf landing, stage or property belonging to the City of Sault Ste. Marie, Michigan, but denies any knowledge as to the ownership of the same by any other public authority, and they deny that said river constitutes the international boundary between the United States of America and Dominion of Canada, or that said complainant is engaged in the transportation of freight (as the term is commonly used) between the points aforesaid, or that said alleged transportation is international or foreign commerce according to the intent and meaning of Article One (1), Section 8, of the Constitution of the as to whether said vessels in said paragraph alleged are of Canadian United States. And these defendants further deny any knowledge Register, or whether complainant operates its steamers between its the Michigan Lake Superior Power Company, under a lease

24 Marie, Province of Ontario, Dominion of Canada, and that

25 from said Company, but leave complainant to its proof thereof.

And these defendants further answering the subject matter of said paragraph, aver that the two steam vessels mentioned in said paragraph are ferry boats, operated exclusively by complainant in the ferriage of persons, their baggage and property across St. Mary's river and from the aforesaid City of Sault Ste. Marie, Michigan, to the opposite or Canadian shore of said river; that said boats are called the "Bawating" and "Algoma" respectively and are authorized to operate only as ferry boats by the United States Steamboat Inspectors of said port of Sault Ste. Marie, Michigan; that the tonnage of each of said boats will not exceed 200 net tons; that the said boats are small vessels constructed and equipped for ferry business only, and not suitable for nor authorized to engage in the general passenger and freight traffic on the Great Lakes.

That St. Mary's River is a navigable stream connecting Lakes Superior and Huron, and is navigated by large vessels up and down stream on their way to points on Lake Superior or Lake Huron and the lower chain of lakes; that no vessels, other than ferry boats, are engaged in transporting persons or property across said river between the aforesaid cities; that said river does not constitute the international boundary line between the United States of America and

Dominion of Canada at the points aforesaid, but that said boundary line is located near mid-stream in said river, and about 1460 feet from the shore line of said river at complainant's ferry dock in said City of Sault Ste. Marie, Michigan; that the distance across the said river from said ferry dock to the opposite shore is 2550 feet.

That complainant operates, conducts and maintains at and near its ferry dock within the City of Sault Ste. Marie, Michigan, and at or near the place where its aforesaid ferry boats receives persons and property for transportation to the Canadian shore, a station 26 house, ticket office, waiting room and a large dock, part of which is enclosed by a fence with a gate where passengers are detained until complainant's ferry is ready to receive said passengers for transportation as aforesaid. That all fares are collected from all passengers by complainant for said transportation across said river to the Canadian shore at complainant's said ticket office, and before those desiring to go aboard said ferry are permitted by complainant go into and upon the dock enclosure aforesaid, preliminary to going aboard the ferry; that no tickets are furnished passengers at the time of paying fares, but as each fare is paid to complainant's agent at said ticket office, the passenger is allowed, and only in such event, to pass through the turnstile, operated from within the ticket office, into the waiting room and thence to the dock enclosure, and when permitted as aforesaid, thence aboard the ferry, and by reason of said payment of fare at said ticket office, the passenger is entitled to ferriage across said river to the Canadian shore, without further payment of ferriage or the furnishing of ticket, tickets, or any evidence of his or her right to be upon said boat; that no fares or tickets are collected, paid or received aboard said ferry, or after the passenger passes through the turnstile in said complainant's ticket office aforesaid; that all the aforesaid operations, conduct and maintenance of complainant's ferry business is under the direction, control and management of a General Manager resident in said City of Sault Ste. Marie, Michigan.

That at complainant's dock and landing place and immediately to the west thereof is a driveway and passageway, through which vehicles and foot passengers, disembarking from complainant's ferry must drive and pass through from the dock on the river front in order to proceed to their respective destinations; that immediately 27 to the west of this driveway and passageway and facing the same are the offices of the U. S. Customs and U. S. Immigration departments, and travelers and their baggage disembarking from said ferry are examined at said offices by the officials of the said departments; that this passageway is shut off for travel at all times by a high wooden gate extending from complainant's ticket office westerly to the Customs and Immigration offices aforesaid, except when travelers are disembarking from said ferry, or when cattle, horses and vehicles are presented for ferriage across said river, when these must pass through said passageway in order to be put aboard said ferry.

That complainant's aforesaid dock enclosure, ticket office, waiting room, and ferry boats (while at said dock or upon said river in

their regular course of travel in said ferry business and on the American side of the aforesaid international boundary line) are all within the corporate limits of the City of Sault Ste. Marie, Michigan, and subject to the police regulations thereof, under its charter authority.

Fourth. These defendants deny any knowledge of the matters set forth in the fourth paragraph of said bill, and, therefore, neither admit nor deny the same but leave complainant to its proof thereof.

Fifth. Answering the fifth paragraph of said bill, these defendants admit that complainant operates said steamers in said ferry service, and that in carrying on said service it transports from the City of Sault Ste. Marie, in the Province of Ontario, to the City of Sault Ste. Marie, in the State of Michigan, passengers, horses, cattle, vehicles, passenger's baggage and articles of merchandise, but denies that it so transports freight unaccompanied by the owner, or agent, or custodian, or caretaker. And further deny any knowledge as to

whether said service is carried on in compliance with an alleged license, as in said paragraph alleged, and therefore, neither admit nor deny the same, but leave complainant to its proof thereof.

And further answering the subject matter of said fifth paragraph of said bill, these defendants aver that complainant in carrying on the said ferry service aforesaid, transports passengers, vehicles, horses and cattle from the City of Sault Ste. Marie, Michigan, to the City of Sault Ste. Marie, Ontario, accepting and receiving the same and collecting and receiving the ferriage for the same at its office and dock described and referred to in the third paragraph herein.

Sixth. These defendants admit the allegations contained in paragraph sixth of said bill, except that portion of said paragraph which alleges that the schedule of rates in said ordinance for the transportation of passengers, animals or merchandise is different from and materially less than complainant is authorized to charge under the alleged license granted by the Dominion of Canada, and as to this allegation, these defendants, deny any knowledge, and, therefore, neither admit nor deny the same, but leave complainant to its proof thereof.

And further answering the subject matter of said paragraph these defendants aver that the ordinance (referred to in said paragraph of said bill as an ordinance) duly passed and adopted by said City of Sault Ste. Marie, Michigan, being ordinance Number CCXXIII of the Ordinance of said City and entitled "An Ordinance to License and Regulate Ferries", a true copy of which is hereto annexed, market Exhibit "A", and for greater certainty in answer to said sixth paragraph and said bill is made a part of this answer.

Seventh. These defendants admit the allegations contained in the seventh paragraph of said bill.

29 Eighth. These defendants deny each and every allegation contained in the eighth paragraph of complainant's Bill of Complaint.

And further answering the subject matter of the eighth paragraph of said bill, these defendants aver that the City of Sault Ste. Marie, defendant herein, has the exclusive right, power and authority to

license and regulate ferries operating within its jurisdiction, granted to it by the State of Michigan, by and through its State Legislature, by and through Local Act No. 455 of the Acts of 1897, and acts amendatory thereof and supplemental thereto, which Acts are a part of its Charter powers, and in pursuance of which the ordinance mentioned and described in the seventh paragraph, and pleaded herein, was passed and adopted, and which right, power and authority is expressed in and by said Act as follows:

Charter Sec. 143. SEC. 1. The City shall in addition to other powers as are herein conferred, have the general powers and authority in this chapter mentioned, and the council may pass such ordinances in relation thereto and for the exercise of the same as they may deem proper, namely:

Fourteenth. "To establish or authorize, license and regulate, ferries to and from the City or any place therein, or from one part of the City to another, and to regulate and prescribe, from time to time the charges and prices for the transportation of persons and property thereon," and

Charter Sec. 191. SEC. 1. The council may regulate and license ferries from the City or any place or landing therein to the opposite shore, or from one part of the City to another and may require the payment of such reasonable sum for such license as the council shall deem proper; and may impose such reasonable terms and restrictions in relation to the keeping and management of such
30 ferries, and the time, manner and rates of carriage and transportation of persons and property as may be proper; and provide for the revocation of any such license, and for the punishment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries and regulating those established and licensed.

And these defendants further aver that the right to license and regulate ferries is a right or power reserved to the several states within their respective jurisdictions and is not in conflict with Article 1, Section 8 of the Constitution of the United States, and that such right or power is not reserved to the Congress of the United States, but belongs to and is exercised by the several states as aforesaid.

Ninth. Answering the ninth paragraph of complainant's bill, these defendants admit that Edgar J. Swart, one of these defendants, made complaint on the day and date alleged against Henry A. Pocock, Captain of Complainant's steamer "Bawating," before Herbert W. Runnells, Justice of the Peace in and for said City, but they deny that said City or any of these defendants has since said arrest threatened other prosecutions under said ordinance, and further deny each and every other allegation in said paragraph contained.

And further answering the subject matter of said paragraph these defendants aver that the allegations contained in said criminal complaint against said Henry A. Pocock, will more fully and to a certainty appear in said complaint, a copy of which is hereto annexed, marked Exhibit "B" and made a part of this answer.

- 31 Tenth. These defendants admit the allegations contained in the tenth paragraph of said bill.

And further answering the subject matter of said paragraph, these defendants aver that the said Henry A. Pocock, Captain of complainant's ferry boat "Bawating", appealed from the conviction under said ordinance before said Justice of the Peace, to the Circuit Court for Chippewa County, Michigan, giving his personal recognition whereby he covenanted and agreed to prosecute said appeal in said Court to effect and abide the order of the Court and in which Court said appeal is now pending and on the calendar for trial at the December term thereof, which convened on December 4th. 1911; that a copy of the Justice's "Return on Appeal" to said Court is hereto annexed, marked "exhibit C" and made a part hereof.

Eleventh. Answering the eleventh paragraph of said bill, these defendants deny that said ordinance is void and contrary to the Constitution of the United States of America, and Article One (1) Section eight (8) thereof; and they deny that the defendant City of Sault Ste. Marie, threatens to subject your orator to further criminal prosecution unless said ordinance is complied with, or that unless restrained by and enjoined by this Court, that complainant, its officers, or agents will be liable to a multiplicity of criminal prosecutions, for alleged violations of said ordinance, or liable for the penalties prescribed by said ordinance, or that complainant's property rights will thereby be invaded, or destroyed, or that unless restrained it will be called upon to defend various prosecutions under said ordinance whereby complainant will suffer irreparable injury in its business.

And further answering the subject matter of said eleventh paragraph of said bill, these defendants aver that said ordinance is a valid ordinance under the charter powers of said City, and

- 32 the laws of the State of Michigan, and that it is not contrary to the Constitution of the United States nor to Article 1. Section eight (8) thereof; that the arrest and conviction secured thereunder as aforesaid was in the nature of a test case; that it is not nor has it been the desire or purpose of said City or its officers to bring against complainant a multiplicity of prosecutions against complainant for violations of said ordinance until the aforesaid case now on appeal has been determined; but that it is the purpose of said city and its officers to compel obedience to the provisions of said ordinance by complainant and all other persons violating any of its terms as soon as the Courts have finally declared said ordinance to be a valid ordinance of said city.

Twelfth. Answering the twelfth paragraph of said bill, these defendants deny that the complainant carries on international commerce by steamers or otherwise between the Dominion of Canada and the United States, but avers that it is engaged in the ferry business by means of two ferry boats, and that its business consists in the ferriage of passengers, vehicles, horses, cattle and small package merchandise from the aforesaid City of Sault Ste. Marie, Michigan, across St. Mary's River to Sault Ste. Marie, Ontario; and they deny any knowledge as to whether said volume of business is substantial,

or that the amount in controversy exceeds \$2,000.00 exclusive of interest and costs, and they further deny that complainant is without adequate relief, if entitled to any relief, except in a Court of equity.

33 Having thus made full answer to all the matters and things contained in the bill, these defendants pray to be dismissed hence with their costs in this behalf incurred.

THE CITY OF SAULT STE. MARIE,
A Municipal Corporation,

By ANDREW J. SHORT, Mayor.

ANDREW J. SHORT, Mayor.

EDGAR J. SWART,
Chief of Police.

ANDREW J. EATON,
City Recorder.

_____,
City Attorney and
Solicitor for Defendants.

_____,
Of Counsel.

34 STATE OF MICHIGAN,
County of Chippewa, ss:

On this 30th day of December, 1911, personally appeared before the undersigned authority, Andrew J. Short, one of the above named defendants, and Mayor of said defendant, City of Sault Ste. Marie, who being duly sworn, says that he is one of the defendants in the above cause and Mayor of said defendant, City of Sault Ste. Marie, and that the matters and things contained in the foregoing answer are true.

ANDREW J. SHORT.

Subscribed and sworn to before me this 30th day of December, 1911.

[SEAL.]

EDWIN S. ROYCE,
Notary Public.

My commission expires Nov. 6th, 1912.

35 EXHIBIT "A".

Ordinance No. CCXXIII.

An Ordinance to License and Regulate Ferries.

The City of Sault Ste. Marie ordains:

SEC. 1. No person, persons, or company shall operate a ferry boat, or engage in the business of carrying or transporting persons or property thereon from the City of Sault Ste. Marie, Michigan, and across the St. Mary's River to the opposite shore, without first obtaining a

license therefor from the Mayor and by otherwise complying with the provisions of this ordinance.

SEC. 2. The Mayor of said City is hereby empowered and authorized to issue and grant a license, as herein provided, to any person, persons, or company to keep, maintain and operate a ferry or ferries, for the carrying and transporting of persons and property from the City of Sault Ste. Marie, Michigan, across the St. Mary's River to the opposite shore, on his, or their paying into the City Treasurer the sum of Fifty (\$50) dollars annually for each boat so engaged in the carrying and transportation of persons and property, and for each launch, sail boat, or row boat used and operated as a ferry from said City to the opposite shore, the sum of Five (\$5) dollars annually.

SEC. 3. Before any license shall be issued or granted by the Mayor as provided in section two (2) of this ordinance, the person, persons or company desiring the same, shall make application therefor to the Mayor in writing, which application shall state the name or names of the boat or boats to be operated as a ferry or ferries, the place or places for receiving and landing persons and property by said ferry or ferries within said City, and which application

shall also be signed by the person or persons desiring the
36 license; and when said application is made by a company or corporation, said application shall be signed by the duly authorized officers of such company or corporation. Said application shall also contain a true and correct schedule of the rates of ferriage of persons and property proposed to be charged by the applicant within the territory prescribed by section two (2) of this Ordinance. And no license shall be issued or granted hereunder unless the application therefor shall conform to the provisions of this Ordinance. And any license-, to whom a license shall have been issued under this Ordinance, who shall fail or refuse to conduct his or their business of ferrying under said license in accordance with the terms, provisions and conditions contained in the application therefor, or contrary to the provisions of this Ordinance, shall be deemed to have forfeited his or their rights to operate said ferry or ferries, and shall subject the offender to the same penalties herein provided for operating a ferry or ferries contrary to this Ordinance without a license therefor.

SEC. 4. Any ferry licensed under the provisions of this Ordinance, and engaged in transporting persons or property across St. Mary's River from points within the City of Sault Ste. Marie, Michigan, shall leave the ferry dock within said City for such transportation at least once every twenty minutes between the hours of six o'clock A. M. and 10:30 o'clock P. M. standard time, and between the 15th day of April and the 15th day of November of each year; and the licensee of said ferry shall at all times keep and maintain in a conspicuous place at his or their ferry dock within said City, a notice of the time of the departure from said dock of such ferry or ferries.

37 SEC. 5. No gaming, drunkenness, quarreling, fighting, obscene or blasphemous language, or any rude, disorderly or immoral conduct shall be allowed on any such ferry.

SEC. 6. The ferriage of persons and property under this Ordinance from the licensee's established dock within said City to the opposite shore, shall not exceed the following rates: For a foot passenger, except children under five years of age, five (5) cents; and children under five (5) years of age in charge of parents, or friends, shall be carried free; for a horse and custodian, twenty (20) cents; for one horse, fifteen (15) cents; for one horse and vehicle twenty-five (25) cents; for two horses and vehicle forty-five (45) cents; for each automobile and driver, forty-five (45) cents; for each head of cattle fifteen (15) cents; for each sheep or hog five (5) cents; for each one hundred pounds baggage, five (5) cents; Provided however, that ferries licensed under this Ordinance, between the 15th day of November and the 1st day of May next following of each year, may charge not to exceed ten (10) cents for each foot passenger for transporting, as herein provided, during such period.

SEC. 7. Every person acting as agent, servant or employee of any person, persons or company operating a ferry, or in charge thereof, or under whose control or directions such ferry is operating or doing business, shall be subject to the same penalties as the licensee for a violation of any of the provisions of this Ordinance.

SEC. 8. The Mayor is hereby authorized to revoke the license granted to any person, persons or company under this Ordinance, whenever he shall be satisfied that such person, persons or company has intentionally violated any of the provisions of this Ordinance, such revocation to take effect upon written notice
38 from the Mayor to such licensee that said license has been revoked: And any operation of such ferry or ferries, within the City limits, after such notice to such licensee, shall be deemed a violation of this Ordinance.

SEC. 9. Any violation of, or failure to comply with the provisions of this Ordinance, shall be punished by a fine, not exceeding one hundred dollars and costs of prosecution, or by imprisonment in the city or County jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the Court.

SEC. 10. This ordinance shall take effect from and after its approval by the Mayor.

By Ald. McEvoy.

Supported by Ald. Lapish.

Whereas, Ordinance No. CCXXIII being an ordinance to license and regulate ferries having been submitted, read and laid on the table for one week at the regular meeting of the Common Council, held on the 18th day of September, 1911, in conformity with the provisions of the City Charter, Now Therefore

Be It Resolved, That Ordinance No. CCXXIII, entitled an Ordinance to license and regulate ferries be and the same is hereby adopted as read.

Carried. Yeas. Ald. Lapish, Moher, McEvoy, Purvia, Ripley, Vanderhook, Weber, (7). Nays, none.

license therefor from the Mayor and by otherwise complying with the provisions of this ordinance.

SEC. 2. The Mayor of said City is hereby empowered and authorized to issue and grant a license, as herein provided, to any person, persons, or company to keep, maintain and operate a ferry or ferries, for the carrying and transporting of persons and property from the City of Sault Ste. Marie, Michigan, across the St. Mary's River to the opposite shore, on his, or their paying into the City Treasurer the sum of Fifty (\$50) dollars annually for each boat so engaged in the carrying and transportation of persons and property, and for each launch, sail boat, or row boat used and operated as a ferry from said City to the opposite shore, the sum of Five (\$5) dollars annually.

SEC. 3. Before any license shall be issued or granted by the Mayor as provided in section two (2) of this ordinance, the person, persons or company desiring the same, shall make application therefor to the Mayor in writing, which application shall state the name or names of the boat or boats to be operated as a ferry or ferries, the place or places for receiving and landing persons and property by said ferry or ferries within said City, and which application

36 shall also be signed by the person or persons desiring the license; and when said application is made by a company or corporation, said application shall be signed by the duly authorized officers of such company or corporation. Said application shall also contain a true and correct schedule of the rates of ferriage of persons and property proposed to be charged by the applicant within the territory prescribed by section two (2) of this Ordinance. And no license shall be issued or granted hereunder unless the application therefor shall conform to the provisions of this Ordinance. And any license-, to whom a license shall have been issued under this Ordinance, who shall fail or refuse to conduct his or their business of ferrying under said license in accordance with the terms, provisions and conditions contained in the application therefor, or contrary to the provisions of this Ordinance, shall be deemed to have forfeited his or their rights to operate said ferry or ferries, and shall subject the offender to the same penalties herein provided for operating a ferry or ferries contrary to this Ordinance without a license therefor.

SEC. 4. Any ferry licensed under the provisions of this Ordinance, and engaged in transporting persons or property across St. Mary's River from points within the City of Sault Ste. Marie, Michigan, shall leave the ferry dock within said City for such transportation at least once every twenty minutes between the hours of six o'clock A. M. and 10:30 o'clock P. M. standard time, and between the 15th day of April and the 15th day of November of each year; and the licensee of said ferry shall at all times keep and maintain in a conspicuous place at his or their ferry dock within said City, a notice of the time of the departure from said dock of such ferry or ferries.

37 SEC. 5. No gaming, drunkenness, quarreling, fighting, obscene or blasphemous language, or any rude, disorderly or immoral conduct shall be allowed on any such ferry.

SEC. 6. The ferriage of persons and property under this Ordinance from the licensee's established dock within said City to the opposite shore, shall not exceed the following rates: For a foot passenger, except children under five years of age, five (5) cents; and children under five (5) years of age in charge of parents, or friends, shall be carried free; for a horse and custodian, twenty (20) cents; for one horse, fifteen (15) cents; for one horse and vehicle twenty-five (25) cents; for two horses and vehicle forty-five (45) cents; for each automobile and driver, forty-five (45) cents; for each head of cattle fifteen (15) cents; for each sheep or hog five (5) cents; for each one hundred pounds baggage, five (5) cents; Provided however, that ferries licensed under this Ordinance, between the 15th day of November and the 1st day of May next following of each year, may charge not to exceed ten (10) cents for each foot passenger for transporting, as herein provided, during such period.

SEC. 7. Every person acting as agent, servant or employee of any person, persons or company operating a ferry, or in charge thereof, or under whose control or directions such ferry is operating or doing business, shall be subject to the same penalties as the licensee for a violation of any of the provisions of this Ordinance.

SEC. 8. The Mayor is hereby authorized to revoke the license granted to any person, persons or company under this Ordinance, whenever he shall be satisfied that such person, persons or company has intentionally violated any of the provisions of this Ordinance, such revocation to take effect upon written notice 38 from the Mayor to such licensee that said license has been revoked: And any operation of such ferry or ferries, within the City limits, after such notice to such licensee, shall be deemed a violation of this Ordinance.

SEC. 9. Any violation of, or failure to comply with the provisions of this Ordinance, shall be punished by a fine, not exceeding one hundred dollars and costs of prosecution, or by imprisonment in the city or County jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the Court.

SEC. 10. This ordinance shall take effect from and after its approval by the Mayor.

By Ald. McEvoy.

Supported by Ald. Laphish.

Whereas, Ordinance No. CCXXIII being an ordinance to license and regulate ferries having been submitted, read and laid on the table for one week at the regular meeting of the Common Council, held on the 18th day of September, 1911, in conformity with the provisions of the City Charter, Now Therefore

Be It Resolved, That Ordinance No. CCXXIII, entitled an Ordinance to license and regulate ferries be and the same is hereby adopted as read.

Carried. Yeas. Ald. Laphish, Moher, McEvoy, Purvia, Ripley, Vanderhook, Weber, (7). Nays, none.

I hereby certify that the foregoing ordinance was by me presented to the Mayor of the City of Sault Ste. Marie, on this 26th day of September, A. D. 1911, for his approval thereon.

A. J. EATON, *Recorder.*

39 I hereby approve the foregoing Ordinance this 26th day of September A. D. 1911.

A. J. SHORT, *Mayor.*

I hereby certify that the foregoing Ordinance was by me received from the Mayor of the City of Sault Ste. Marie, Michigan, on the 26th day of September, A. D. 1911, with his approval thereon.

A. J. EATON, *Recorder.*

I hereby certify that the foregoing Ordinance was published in the Soo Times a weekly newspaper printed and circulated in this City on the 30th day of September, 1911.

A. J. EATON, *Recorder.*

40

EXHIBIT "B."

STATE OF MICHIGAN,

County of Chippewa,

City of Sault Ste. Marie, ss:

The Complaint of Edgar J. Swart, of the City of Sault Ste. Marie, in said County, Taken and Made on Oath before Me Herbert W. Runnels, Justice of the Peace in and for the City of Sault Ste. Marie, in said County of Chippewa and State of Michigan, and by Me Reduced to Writing upon this 27th day of October, 1911.

The said complainant, being duly sworn, says that heretofore, to-wit: On the 25th day of October A. D. 1911, at the City of Sault Ste. Marie, and in the County of Chippewa, aforesaid Henry A. Pocock then and there being, did then and there operate, conduct and direct the moving of a certain ferry boat, propelled by steam and called the Bawating, and then and there being upon St. Mary's River and being in charge thereof, he, the said Henry A. Pocock, did then and there ferry, carry, and transport upon said ferry boat persons and property from the said City of Sault Ste. Marie, Michigan, upon and across St. Mary's River to the opposite shore, without first having obtained a license so to do, and without a license having been applied for, or issued, for the operation of said boat upon St. Mary's River as aforesaid, against the form of and in violation of an ordinance of the City of Sault Ste. Marie, to-wit

An ordinance of the City of Sault Ste. Marie, entitled "An ordinance Relative to Licensing and Regulating Ferries and being ordinance No. CCXXIII which said ordinance was passed and approved on the 26th day of September A. D. 1911.

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Wherefore, the said complainant Edgar J. Swart prays that the said Henry A. Pocock may be apprehended and held to

answer to the said complaint, and further dealt with in relation to the same, as the said ordinance and justice may require.

EDGAR J. SWART.

Taken, made, subscribed and sworn to before me, at the City of Sault Ste. Marie, in said County, the day and year above written.

HERBERT W. RUNNELS,

*Justice of the Peace of the City of
Sault Ste. Marie, Michigan.*

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EXHIBIT "C."

STATE OF MICHIGAN,
County of Chippewa, ss:

I, the undersigned Herbert W. Runnels one of the Justices of the Peace in and for said County, do hereby certify and return to the Circuit Court of the said County of Chippewa that on the 27th day of October, A. D. 1911, one Edgar J. Swart of Sault Ste. Marie, made complaint to me that Henry A. Pocock did on the 25th day of October, A. D. 1911, at the City of Sault Ste. Marie in said County of Chippewa, Henry A. Pocock then and there being, did then and there operate, conduct and direct the moving of a certain ferry boat, propelled by steam and called the Bawating, and then and there being upon St. Mary's River, and being in charge thereof, he, the said Henry A. Pocock, did then and there ferry, carry and transport upon said ferry boat persons and property from the said City of Sault Ste. Marie, Michigan, upon and across St. Mary's River to the opposite shore, without first having obtained a license so to do, and without a license having been applied for, or issued, for the operation of said boat upon St. Mary's river as aforesaid, against the form and in violation of an ordinance of the City of Sault Ste. Marie, to-wit: An Ordinance of the City of Sault Ste. Marie entitled an ordinance relative to Licensing and Regulating ferries and being Ordinance No. CCXXIII, which said ordinance was passed and approved on the 26th day of September, A. D. 1911, whereupon I, the said justice, did examine the said complainant, said Edgar J. Swart, and it appearing to me the said Justice, that said offense has been committed, I issued a warrant directed to a sheriff or any constable of said county and commanding such sheriff or Constable forthwith to arrest the said Henry A. Pocock and bring him before me or some other justice of said County, to be dealt with according to the law; which said warrant was on the same day returned to me by Edgar J. Swart, Chief of Police of the City of Sault Ste. Marie in said County, with the body of said Henry A. Pocock in his custody. As well as the said Edgar J. Swart as the said Henry A. Pocock appeared before me and the charge made against the said Henry A. Pocock as stated in the warrant to arrest was distinctly read to him, the said Henry A. Pocock and he being required by me to plead thereto, stood mute, and I did forthwith enter a plea of not guilty, and on the 1st day of November, 1911,

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at 10 A. M. Defendant appeared in Court with Counsel and expressly waived a trial by jury and the case was called. Defendant filed a motion to quash, which was duly considered by me and overruled, and is made a part of this my return, and after the introduction of all the testimony in said cause, defendant moved that he be discharged for the reason that the testimony showed no offense had been committed which was by me overruled, and after hearing all of the testimony in said cause and arguments of counsel, and duly considering the same, I did find that the offense charged in said Complaint and Warrant had been committed and did find the said Henry A. Pocock guilty; whereupon I, the said Justice, did render judgment that the said Henry A. Pocock should pay a fine of Fifty (\$50.00) Dollars and costs taxed at One and twenty hundredths dollars (\$1.20) within twenty-four (24) hours or in default thereof that he should be imprisoned in the County Jail of said County Thirty (30) days, from and including the 1st day of November, A. D. 1911, And thereupon the said Henry A. Pocock appealed from the said judgment and sentence to the Circuit Court for the said County of Chippewa and did then and there on the 1st day of November, A. D. 1911, enter into a personal recognizance before me as required by law, himself in the sum of Three hundred (\$300.00) Dollars, conditioned that the said Henry A. Pocock, should appear before the Circuit Court of said County on the first day of the next term thereof and prosecute his appeal at said term to effect
 44 and abide the order and judgment of said Court, and thereupon I discharged the said Henry A. Pocock. And I do further certify and return that the said recognizance together with the Complaint and Warrant taken by me in said cause, is also annexed to this my return to said appeal and herewith returned to said Circuit Court.

Given under my hand in the City of Sault Ste. Marie in said County on the 1st day of November, A. D. 1911.

HERBERT W. RUNNELS,
Justice of the Peace.

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EXHIBIT "C."

(Part of Return on Appeal.)

Warrant—General Form.

STATE OF MICHIGAN,
County of Chippewa,
City of Sault Ste. Marie, ss:

To the Chief of Police or any Policeman of the City of Sault Ste. Marie, Greeting:

Whereas, Edgar J. Swart hath this day made complaint in writing and on oath to Herbert W. Runnels the Justice of the Peace in and for the City of Sault Ste. Marie, in said County of Chippewa and State of Michigan, that heretofore, to-wit: On the 25th day of Octo-

ber A. D. 1911 at the City of Sault Ste. Marie, and in the County of Chippewa, aforesaid Henry A. Pocock then and there being did then and there operate, conduct and direct the moving of a certain ferry boat, propelled by steam and called the Bawating, and then and there being upon St. Mary's River, and being in charge thereof, he, the said Henry A. Pocock, did then and there ferry, carry and transport upon said ferry boat persons and property from said City of Sault Ste. Marie Michigan, upon and across St. Mary's River to the opposite shore, without having obtained a license so to do, and without a license having been applied for, or issued, for the operation of said boat upon St. Mary's River as aforesaid against the form of and in violation of an ordinance of the City of Sault Ste. Marie, to-wit: An Ordinance of the City of Sault Ste. Marie, entitled, "An Ordinance Relative to Licensing and Regulating Ferries and being Ordinance No. CCXXIII which said ordinance was passed and approved on the 26th day of September A. D. 1911.

And, whereas, on examination on oath of the said Edgar J. Swart by me the said Justice of the Peace, it appears to me the said Justice of the Peace, that such offense has been committed, and there is just cause to suspect the said Henry A. Pocock to have been guilty thereof.

46 Therefore in the name of the People of the State of Michigan, you and each of you, are commanded forthwith to arrest the said Henry A. Pocock and bring him before me to be dealt with according to law.

And you are further commanded, in the Name of the People of the State of Michigan, to summon — — of — — to appear before me, the said Justice of the Peace, when and where you shall have the accused party, to testify — knowledge on behalf of said People touching the matter of said complaint.

Given under my hand and seal at the City of Sault Ste. Marie in said County, on the 27th day of October A. D. 1911.

HERBERT W. RUNNELS,

Justice of the Peace of the City of Sault Ste. Marie, Mich.

Endorsed.

STATE OF MICHIGAN,

County of Chippewa, ss:

I hereby certify that the within is a true and correct copy of a warrant issued by me in the case of the People vs. Henry A. Pocock on the 27th day of October, A. D. 1911.

[SEAL.]

HERBERT W. RUNNELS,

Justice of the Peace, Chippewa County, Michigan.

Warrant for Henry A. Pocock.

47

EXHIBIT "C."

(Part of Return on Appeal.)

STATE OF MICHIGAN,
County of Chippewa, ss:

THE CITY OF SAULT STE. MARIE, Complainant,
 vs.
 HENRY A. POCKOCK, Respondent.

Before Herbert W. Runnels, Justice of the Peace.

And now comes the defendant and moves the Court now here to quash the complaint and Warrant in this cause and discharge the prisoner, because the said Complaint and Warrant charge no offense in this, that the ordinance relied and counted on is void and in conflict with Article One, Section Eight, Paragraph Three of the Constitution of the United States, commonly known as the Commerce clause of the said Constitution; and because the defendant is privileged to operate a ferry in manner and form as charged in said Complaint and Warrant under said Commerce clause, from the shores of the State of Michigan to a foreign country, the Dominion of Canada, and is in so doing not amenable to said City and is privileged from arrest and from obtaining any license from said City or being under any municipal regulation as to rates of tariff or tolls and as to periods of frequency of trips or hours of service, because he is in operating said ferry engaged in foreign commerce and amenable only to the laws—if any—of the United States; and defendant claims such privilege and immunity under the said paragraph Three of Section Eight of said Article One of the said Constitution; and because the Congress in not regulating commerce across the St. Mary's River between Sault Ste. Marie, Michigan and the Dominion of Canada, has left the same free and open to all
 48 persons whether aliens or citizens.

GEORGE A. CADY,
Attorney for Defendant.

Dated November 1st, 1911.

49

EXHIBIT "C."

(Part of Return on Appeal.)

Recognizance on Appeal—Criminal.

STATE OF MICHIGAN,
County of Chippewa, ss:

Be it Remembered, That on the 1st day of November A. D. 1911, Henry A. Pocock of Sault Ste. Marie, in said County, and ——— of ——— in said County, personally came before me, Herbert W. Run-

nels, a Justice of the Peace of the City of Sault Ste. Marie in said County of Chippewa, and severally and respectively acknowledged themselves to be indebted to the People of the State of Michigan in the sum of Three hundred (\$300.00) Dollars, to be levied of their goods and chattels, lands and tenements, to the use of the said People, if the said Henry A. Pocock shall make default in the condition following:

Whereas, the said Henry A. Pocock was on the 28th day of October A. D. 1911, brought before me, the said Justice of the Peace, by virtue of a warrant issued by me, upon the complaint in writing and upon oath of Edgar J. Swart of Sault Ste. Marie taken before and by me, the said Justice of the Peace, at Sault Ste. Marie in the said County of Chippewa on the 27th day of October A. D. 1911, in which said complaint and warrant, the said Henry A. Pocock was charged with having committed the following offense: That heretofore, to-wit: on the 25th day of October A. D. 1911, at the City of Sault Ste. Marie and in the County of Chippewa aforesaid Henry A. Pocock then and there being did then and there operate, conduct and direct the moving of a certain ferry boat, propelled by steam and called the Bawating, and then and there being upon St. Mary's River, and being in charge thereof, he the said Henry A. Pocock, did then and there ferry, carry and transport upon said ferry boat

persons and property from said City of Sault Ste. Marie,
 50 Michigan, upon and across St. Mary's River to the opposite shore without first having obtained a license so to do, and without a license having been applied for, or issued, for the operation of said boat, upon St. Mary's River, as aforesaid against the form of and in violation of an ordinance of the City of Sault Ste. Marie, to-wit: An Ordinance of the City of Sault Ste. Marie, entitled an Ordinance Relative to Licensing and Regulating Ferries and being Ordinance No. CCXXIII, which said Ordinance was passed and approved on the 26th day of September, A. D. 1911, of which said offense as above set forth the said Henry A. Pocock after trial therefor, was duly convicted and found guilty before me, the said Justice of the Peace, on the 1st day of November A. D. 1911.

Whereupon I, the said Justice of the Peace, did render judgment and sentence, that the said Henry A. Pocock should pay a fine of \$50.00 and \$1.20 costs within 24 hours or in default thereof that he be and remain imprisoned in the County Jail for said County for a period of 30 days from and including this date.

And Whereas, the said Henry A. Pocock appeals from the said judgment and sentence, so rendered by me, to the Circuit Court of the County of Chippewa.

Now, Therefore, the Condition of this Recognizance if such, that if the said Henry A. Pocock shall be and appear personally at the next term of the Circuit Court, to be held in and for the County of Chippewa on the 4th day of December A. D. 1911, at the Court in the City of Sault Ste. Marie in said County, and prosecute his said appeal at said term to effect, and abide the orders and judgment of said Circuit Court, then this Recognizance to be void, otherwise to remain in full force and virtue.

H. A. POCOCK. [L. S.]

51 Taken, subscribed and acknowledged before me, on the day and year first above written.

HERBERT W. RUNNELS,
Justice of the Peace.

STATE OF MICHIGAN,
County of Chippewa, ss:

Henry A. Pocock of the City of Sault Ste. Marie in the said County of Chippewa the sureties named in and who executed the within and foregoing instrument, being *severally and* duly sworn, *each for himself*, deposes and says that he is worth in unincumbered property, not exempt from execution under the laws of this State, the sum of Three Hundred (\$300.00) Dollars, after payment of all just debts, claims and liabilities.

HENRY A. POCOCK.

Subscribed and sworn to before me, this 1st day of November A. D. 1911.

HERBERT W. RUNNELS,
Justice of the Peace.

Endorsed: Recognizance on Appeal, Criminal. The People of the State of Michigan vs. Henry A. Pocock.

52 Endorsed: United States of America. The Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants. Filed Jan. 2, 1912. Chas. L. Fitch, Deputy Clerk. Answer of Defendants. F. T. McDonald, City Attorney and Solicitor for Defendants. John W. Shine, of Counsel.

53 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

THE CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edward J. Swart, Chief of Police, Defendants.

TUESDAY, January 9, 1912.

The Court met pursuant to adjournment.

Present: The Honorable Clarence W. Sessions, District Judge.

This cause coming on to be heard upon the order heretofore issued and duly served upon the defendants requiring them to show cause why a preliminary injunction should not issue as prayed for in the bill of complaint pending the final hearing upon the merits of this

cause, and the complainant being represented by Henry E. Bodman, Esq., and the defendants by F. T. McDonald, Esq., on due consideration thereof,

Ordered that until the hearing of this case upon the merits and the entry of the final decree herein, the defendants and each of them be, and they are hereby, restrained from any further proceedings for the enforcement of the penalties described in the ordinance set forth in the bill of complaint, provided, however, that the defendants shall not be restrained and are not restrained from the prosecution of the criminal case now pending in the Circuit Court for Chippewa County, Michigan, against Henry A. Pocock, for the alleged violation of the ordinance as set forth in the bill and answer in this cause.

Approved for entry January 9, 1912.

C. W. SESSIONS,
U. S. District Judge.

54 Service of within order is hereby accepted on behalf of defendants.

F. T. McDONALD,
Sol'r for Def'ts.

Dated Jan. 9, 1912.

Endorsed: No. 228. United States District Court, Western District of Michigan, Northern Division. In Equity. International Transit Company, Complainant, vs. City of Sault Ste. Marie et al., Defendants. Temporary Injunction. Filed Jan. 9, 1912. Chas. L. Fitch, Clerk. C. 480.

55 District Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

To the Honorable District Court of the United States for the Western District of Michigan:

The replication of the International Transit Company, complainant, to the answer of the defendant in said cause.

This defendant, saving and reserving unto itself all advantage of exception to the insufficiency of the said answer, for replication thereunto, says that it will aver and prove said bill to be true, certain and sufficient in the law to be answered, and that the said answer of the defendants is uncertain, untrue and insufficient to be replied upon by this complainant; without this, that any other matter or thing whatsoever in the answer contained material or effective in law to be replied to, confessed and avoided, traversed, or denied, is true,

all which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and therefore prays as in its bill of complaint it has heretofore prayed.

BOYNTON, McMILLAN, BODMAN &
TURNER,

Solicitors for Complainant.

56 Endorsed: No. 228. District Court of the United States for the Western Dist. of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, a Municipal corporation, Andrew J. Short, Andrew J. Eaton, Edgar J. Swart, Defendants. Replication. Filed January 29, 1912, Fred. J. Schultheis, Deputy Clerk. Boynton, McMillan, Bodman & Turner, Solicitors for Complainant, 704 Union Trust Building, Detroit, Michigan.

57 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

It is hereby stipulated by and between the respective parties hereto by their respective counsel that the testimony of Evelyn Ranson be and the same may be taken before A. G. Old, a Notary Public, at Room 310 Adams Bldg., Sault Ste. Marie, Michigan, on the 19th day of January, A. D. 1912, and continue from day to day until said deposition is completed, and such testimony may be taken down stenographically and transcribed by or under the direction of said Notary Public, and that the testimony of each witness when so transcribed shall be signed by such witness, and that said depositions may be read in evidence on the trial of this cause and have the same force and effect as if the witness was present in court and testified.

It is further stipulated that the same objections as to the competency and materiality may be made during the taking of the testimony in the same manner and to the same effect as if the witness was testifying in court at the trial thereof, and that the objections so taken shall have the same force and effect.

58 It is further stipulated that the depositions when completed shall be enclosed in a sealed package or envelope and forwarded by said Notary to the Clerk of said Court.

Dated January 18, 1912.

BOYNTON, McMILLAN, BODMAN &
TURNER,

Attorneys for Complainant.

F. T. McDONALD,

Attorney for Defendants.

59 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

Deposition of Evelyn Ranson.

Deposition of the foregoing witness was taken pursuant to a stipulation hereunto attached, at the time and place stated therein, to-wit: Room 310 Adams Bldg., Sault Ste. Marie, Michigan, on the 19th day of January, A. D. 1912, at two o'clock in the afternoon, before me A. G. Old, a Notary Public in and for the County of Chippewa and State of Michigan, and continued on Monday the 22nd day of January, 1912, to be read in evidence at the trial of said cause in behalf of said complainant.

Present:

John H. More, Solicitors for Complainant.
F. T. McDonald, Solicitor for Defendants.
John W. Shine, of Counsel.

Pursuant to said Stipulation the following witness appeared and testified as follows:

60 EVELYN RANSON, a witness produced on the part of the Complainant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination:

By Mr. MORE:

Q. Where do you reside Miss Ranson?

A. On Albert Street.

Q. In the Canadian Soo?

A. Yes.

Q. How old are you?

A. 23.

Q. Are you in the employ of the International Transit Co.?

A. Yes.

Q. How long have you been in their employ?

A. I have been in their employ since 1907. I think that was when I started; in the month of July. I started first as assistant.

Q. What is your employment there with them?

A. Agent, collector.

Q. Shipping clerk?

A. Yes.

Q. And of their freight business?

A. Yes.

Q. Do you collect their passenger fares?

A. Yes, and baggage.

Q. And act as shipping clerk for their freight shipments?

A. Yes, between the two Soos.

Q. On the steamers?

A. Yes, of the International Transit Co.

Q. I wish you would describe what the transaction is when you have a shipment of freight unaccompanied by the owner.

A. Now, for instance, The Soo Hardware Company would send a shipment of freight to H. E. Talbot & Co. to the Canadian Soo. Well they would have the freight—they would first go to the customs and make out their proper manifest; they would bring that manifest to the agent on duty and when she would see that it was properly signed by the Custom Officer on duty and by the shipper then she would make out her bills starting with the shipping bill.

61 That shows how it is addressed to the person in Soo, Ontario, and the number of packages and weight. No. 1 bill is signed by the agent on duty so that the shipper can have them to take back to the Soo Hardware Co. to show that they have done their part in sending the freight over—that they have not brought the freight to some other place. No. 2 bill is signed by the shipper and kept on file in the office so that the agent will have that to clear her as having made out this bill that is required. And then when both offices are open—the Canadian and American office after the porter has O. K'd them that weight is correct, as near as he thinks they have given the proper weight, he will O. K. the bill, and then she will make out a way bill. No. 1 part will accompany the shipment on the boat by the deck hands and will be delivered to the porter on the Canadian side, and he will check them to see that the number of packages are there and that they are in good order, and that they are not any damaged. He will bring in this way bill to the agent on duty at the Canadian Ferry dock office; from this bill she will make out a release and have that signed by the owner of the goods. If goods are collect we will give him receipt No. 1 signed by the agent and he will sign No. 2 which is put on file.

Q. On shipments from the Canadian Soo to the American Soo the same transaction is carried on?

A. Yes, of course it is a different bill in regard to the customs but that is all.

Q. I ask you, Miss Ranson, if you keep these records when you are on duty of these shipments in your own hand writing in the original book of entry. You keep a record of the transaction in a book?

A. Yes, in the freight book.

62 Q. And you make out the shipping bills in your own hand?

A. Yes when on duty.

Q. Have you here with you copies of way bills and shipping bills for any transaction in November?

A. Yes.

Q. I call your attention to a shipment on November 3rd to A. F. Pickford & Co. from the Gowan Hardware Co., and ask you if you made out these bills in your own hand writing?

A. Yes.

Mr. MOORE: I will have these papers marked for identification. Shipping bill marked Comp. Exhibit "A". Way bill marked Comp. Exhibit "B". Release marked Comp. Exhibit "C".

Q. Those papers, together with your freight record here, covered the transaction or shipment on that date?

A. Yes.

Q. I call your attention to shipment on November 6, 1911, The Soo Hardware Company to H. E. Talbot and Company. Have you the shipping bill, way bill and release for that shipment?

A. Yes.

Mr. MORE: I ask to have them marked for identification. Shipping bill marked Comp. Exhibit "D". Way bill marked Comp. Exhibit "E". Release marked Comp. Exhibit F.

Mr. MORE: I offer in evidence Exhibits "A", "B", "C", "D", "E", and "F".

Mr. SHINE: We object to the introduction of those exhibits in evidence as they appear to be made out for the Algoma Central and Hudson Bay Railway Company and contain provisions relative to that road, and there is nothing to indicate from them how much, if any, of the provisions are intended to apply to this complainant company.

Mr. MORE: Miss Ranson, in these shipping bills and release I notice the name of the Algoma Central and Hudson Bay Railway Co. printed, and these names have been erased and the International Transit Company written in. Why were these
63 bills used in this form? Why were you using the Algoma Central and Hudson Bay Ry. Co. paper and erasing the name and writing in the name of the International Transit Co.?

A. Because this stationery was in stock. It was sent to us from the stationary office and we were told to draw a line through the name and put the International Transit Co. This was all that was necessary for those bills.

Q. So you use these and erase the name of the Algoma Central & Hudson Bay Railway Co. and insert—

A. Yes,—and put the International Transit Co.

Q. So that the bills would stand as the bills of the International Transit Co.

A. Yes.

Q. I would like to ask you, Miss Ranson, if you know how many transactions of this kind occur in the month on an average—how many in November?

A. In November?

Q. Yes, we will say for November?

A. I can get it for you.

Witness by referring to her freight book and record kept by her for the month of November, 1911, answered—136 total shipments.

Q. Were a majority of these shipments accompanied by the owner?

A. Yes, a majority were.

Q. I ask you how many shipments in the month of November were unaccompanied by the owner?

A. Twenty-seven.

Cross-examination.

By Mr. McDONALD:

Q. Showing you complainant's Exhibit "A" in which the International Transit Co. is written in in lead pencil, is that your hand writing?

A. Yes, my writing.

64 Q. And this was used as what—rather this is called what?

A. A shipping bill.

Q. And this and all your shipping bills were made on this form because of the fact that you had them in stock?

A. Yes.

Q. Showing you complainant's exhibit "E"—what is that called?

A. A release.

Q. And this release is an old form of the Algoma Central and Hudson Bay Co. release?

A. Yes.

Q. And used by the Complainant Company because you had them in stock?

A. Yes.

Q. The name International Transit Company is written in pencil—is that your hand writing?

A. Yes.

Q. And the same is true of Exhibits A and C, D and F?

A. Yes.

Q. You are familiar, Miss Ranson, with the boats operated by the complainant company—that is you know the boats; the Bawating and Algoma?

A. Yes.

Q. You have ridden on the boats a number of times?

A. Yes.

Q. Back and forth?

A. Yes.

Q. And familiar with the way merchandise and articles transported between the two Soos is handled on the boats?

A. Yes.

Q. And the way that fares are paid by foot passengers and where it is paid, and the accommodations for foot passengers on these ferry boats. You are familiar with it?

A. Yes.

Q. You have referred to property accompanied by the owner or care taker—that is shipped from the Michigan Soo to the Canadian Soo; where is that property placed on the boat and how is it cared for in transit?

A. This freight?

Q. No not this freight. Property accompanied by owner—any property.

A. Accompanied by the owner?

65 Q. Yes.

A. The property is put on the boat. If it is loaded it is left in the rig and the rig is taken on the ferry—the wagon is—

Q. You say it is taken on the ferry; in other words the party in charge of the shipment drives the vehicle loaded onto the ferry?

A. Yes.

Q. And when the Canadian Soo is reached he drives it off unto the dock?

A. Yes.

Q. No other person has any charge of it in transit?

A. Well the deck hands on the ferry boats are supposed to see that none of the passengers interfere with any freight loaded on vehicles, except, of course, the owner.

Q. Horses and cattle are frequently carried from the Michigan Soo to the Canadian Soo on either of those boats.

A. Yes, we oftener get horses than cattle.

Q. There is no place to put the horses or cattle except the lower deck of the boats?

A. No.

Q. And the party shipping the same across to the Canadian Soo takes charge of the cattle or horses on the boat?

A. Yes, on the ferry.

Q. There are no separate compartments on either of these boats for the parcels of freight or property of any kind in transit?

A. Not that I know of except on the lower deck.

Q. Which is open?

A. Yes.

Q. The property that is transported of whatever kind is put on the ferry at the American dock by the person in charge of the property—that is either the owner or the custodian of it.

A. That is if it is in a rig.

Q. And if he had it in his hand it is done likewise?

A. Yes.

66 Q. Now supposing he is in charge of the property and accompanies the same on the boat to the Canadian Soo how then is it put on the boat?

A. The freight is taken from the rig and is handled by the deck hands on trucks onto the boat—taken from the dock.

Q. That would not be true if he lead a horse down to the dock?

A. No, a horse does not go without the owner accompanying it.

Q. And the same is true of cattle?

A. Yes.

Q. There are no cars, tracks, or trucks for transferring freight from a warehouse, or anything of that kind, onto the boat in connection with your ferry operations on the American side?

A. The only thing we use is the small trucks, and they can take the freight from the warehouse that has been left there until the owner comes to make out proper bills. You see the shipper comes

down and makes out the proper bills. We do not send any freight on the ferry without bills accompanying them.

Q. You are speaking now of the American side?

A. Yes, there is a ware house on both sides.

Q. Will you now state the amount paid your company for transportation of property from the Canadian Soo to the Michigan Soo in the month of November, 1911, which property was accompanied by the owner or caretaker.

A. I cannot tell you from this book, because from this I cannot tell which shipment is from Soo, Ontario, or which shipment is to Soo, Ontario. They are both in here mixed.

Q. Will you state, Miss Ranson, the total amount paid your company for the transportation of property from the Michigan Soo to the Canadian Soo accompanied by the owner, and the total amount paid for the transportation of property unaccompanied by the owner from the same point, or between the same points, for the month of November, 1911?

67 A. No as these way bills were not all made out by myself. An agent when on duty when I was not there might not have put the shipper, then I would not be accountable for that; no, I can't tell.

Q. You have not the records for it?

A. Not in my hand writing, no.

Q. Can you tell from records in your possession the shipments made in the month of November, 1911, unaccompanied by the owner?

A. Some.

Q. You can tell what the records show?

A. I can tell the total.

Q. I show you complainant's exhibit "A" which purports to be a consignment of certain articles from one Will Hewitt, consignor, to A. E. Pickford, Soo, Ontario, and ask you if you know of your own knowledge if that was accompanied by the owner or not?

A. No, that was not; this shipment no one accompanied it.

Q. How do you know?

A. Because I was on duty and made out the bill and sent the goods to Soo, Ontario.

Q. Did you follow the shipment out and see it loaded on the ferry.

A. No.

Q. You do not know who put it on the ferry of your own knowledge?

A. The deck hands did.

Q. You don't know the individual who put it on?

A. No.

Q. Then you don't know but what that shipment from the time it was put on the ferry boat until it landed in Sault Ste. Marie, Ontario, had a custodian or caretaker in charge of it—of your own knowledge you don't know that?

A. No one but the boys on duty, the deck hands on the boat have charge of it.

Q. Were you on the boat?

A. No.

Q. Referring you again to Exhibit "A," you don't know of your own knowledge—you don't know if the owner accompanied it, or a caretaker?

68

A. No, just from what the writing shows.

Q. There is a large travel back and forth on these ferry boats of foot passengers, is there not?

A. Not what you would say large.

Q. Well sometimes it is large and sometimes it is small?

A. There is a small travel of foot passengers, yes.

Q. Between the two Soos?

A. Yes.

Q. And that is the biggest part of the business of the company?

A. Cash fares, yes.

Q. Does one boat or two ferry between the two Soos at the same time?

A. One that I know of.

Q. And how many trips does it make between both Soos each day—each twenty-four hours?

A. Thirty-two on week days, thirty on Sundays, then if they happen to have a late ferry it makes one or two extra trips just whatever the person who charters the ferry pays for.

Q. And a great many of these people that travel or that are ferried across the river from the Michigan Soo to the Canadian Soo carry hand bags and other articles of merchandise with them, do they not?

A. I would say a majority were largely passengers coming back and forth to work and visiting and things of that kind; I only know by looking at them; I don't ask them; I think the majority would be without hand bags.

Q. There are a great many passengers that travel to the Canadian Soo from the Michigan Soo to work who have their homes in the Michigan Soo, is that true?

A. I could not tell you that. I couldn't tell you whether they are married or single; I take their fare, that is all I care.

Q. What do you mean Miss Ranson when you say a great many people going to work?

69

A. Well, going to work and coming over to shop, travelling around, tourists, and all like that.

Q. There is a large part of the travel back and forth that is classified in that way?

A. I don't ask them whether they are going to work, or visiting their relatives, all like that. I don't know; I don't ask them.

Q. There is a large part of this travel on your ferry boats classified as you have just stated?

A. Yes, I would judge.

Q. The class of people that you have named, when they leave the Michigan Soo at your ferry dock they go over to the Canadian Soo and go up town?

A. No they don't have to do that; they can ride on the ferry all day long without getting off.

Q. If you have paid the fare at the dock on the American side?

A. Yes, it is paid to myself when they want to go over.

Q. The people that do get off at the Canadian dock—they go up town; they walk up town, do they?

A. Or take a street car, yes; they don't have to walk up town; they may be going to take a train to Chicago or some place else; I don't ask them where they are going.

Q. There would not be many people going over to take a train, would there?

A. I don't know; I don't ask them where they are going.

Q. Can you state the amount of money taken in by your Company for ferriage of persons from the Michigan Soo to the Canadian Soo in the month of November, 1911, or any previous month?

A. Not without I refer to my cash book.

Q. Can you make that statement by referring to that cash book?

A. Cash fares—yes, it is shown.

Q. You have that book so you can get it?

A. My cash book, yes.

70 Mr. MORE: We object to any testimony as to the earnings of the Ferry Co. either for freight or passengers as the amount of earnings are not in controversy in this suit.

Mr. McDONALD: This testimony is not offered for the purpose of showing the earnings of the company, but in order to classify the business the company is engaged in showing the proportion.

Mr. McDONALD: Counsel for defendants now request of counsel for complainant to produce the book or books showing the amount received for the ferriage of persons from the Michigan Soo to the Canadian Soo during the past year.

Mr. SHINE: The witness having testified that she has possession of the cash books that will show the receipts for passengers carried on the ferry for the last year, she is asked to bring those books in before the Notary taking the testimony so as to ascertain from them the average monthly receipts for the past year for carrying passengers on those ferry boats, and request counsel for complainant, who produced the witness, to permit the witness to bring in those books, the object being to show that if any freight was carried without being accompanied by the owner or custodian it was only occasional and constituted but a small fraction of the ferry business.

Mr. MORE: Counsel for complainant states that the cash books of the company are not convenient to access but I am willing to concede that for the purpose of this case we will admit that the receipts for carrying passengers for the last year on complainant's boats were fifty times more than the receipts received for property carried whether accompanied or not, and that the receipts for property carried accompanied by the owners or custodian amounted to thirty times as much as that unaccompanied by the owner or custodian.

71 By Mr. SHINE:

Q. Miss Ranson, you stated in answer to Mr. McDonald's question that you did not know whether anybody accompanied that shipment that you referred to as being Exhibit "A." Do I state that correctly, is that what you testified to? That you could not swear from your

own personal knowledge that any custodian or owner accompanied them?

A. I wouldn't swear, no.

Q. Let me ask you again, is there any shipment that you can call attention to made during the month of November, 1911, of freight or property, so to speak, that was shipped from the Michigan Soo to the Canadian Soo, or from there over here, that you can swear positively it was not accompanied by any owner or custodian? From your own personal knowledge?

A. Yes, there are lots of shipments that come over that are not accompanied by any one.

Q. Do you know from your own personal knowledge?

A. Yes.

Q. Will you tell me of one shipment from your own personal knowledge that some one did not accompany it either as custodian or caretaker or something of that character?

A. Yes.

Q. Tell me what that shipment was?

A. 100 rolls of roofing consigned to H. E. Talbot, Soo, Ontario.

Q. You are reading now from one of the Exhibits, are you?

A. Yes.

Q. Which one?

A. Exhibit "F".

Q. Now let me ask you if you have any personal knowledge of that shipment other than what you see on the exhibit?

A. Yes, I saw the 100 rolls of roofing placed on the dock off of the rig; the shipper unloaded them and left them on the dock to be taken care of by the Ferry Co. and properly shipped to Soo, Ontario.

72 Q. But of your own personal knowledge did you—

A. I saw the man come in and sign the shipping bill, paid the freight to myself, which amounts to \$5.00 and—

Q. I am asking you whether you know whether anybody accompanied it over or not of your own personal knowledge.

A. No one accompanied it.

Q. Do you know that? Do you mean to swear that no one accompanied that?

A. No one accompanied that—only the ferry employees, our men that are on the boats that take the lines and clean the boats and attend to it.

Q. Where were you at the time?

A. When this bill was made?

Q. When this shipment was made?

A. On duty.

Q. But where?

A. In the office.

Q. On the dock?

A. Yes.

Q. Were you not on the boat at all?

A. No.

Q. Now, then, how do you know that no one accompanied these goods across on the boat?

A. How do I know?

Q. Yes, how do you know?

A. Well he went back on the rig—

Q. But will you swear that nobody accompanied the goods across?

A. None of Mr. Talbot's employees.

Q. Do you know them?

A. Well I guess I know some of the Talbot Company—Mr. Talbot, Sr., and Mr. Talbot, Jr.

Q. Then the only reason that you testified no one accompanied it is because you did not see any of the Talbots going on the boat?

A. No, that is not the only reason. The reason is that the shipper when he was sending that over he sent that over for the Ferry to take care of.

Q. You were not on the boat at all, were you?

A. No.

73 Q. You don't know personally whether anybody was on the boat in charge of these goods representing the owners or shipper, do you?

A. I know there was not anybody because that matter was left entirely to me to give to the dock men—to give to the deck hands.

Q. You know what personal knowledge is, do you?

A. Yes.

Q. If you were not on the boat you could not see whether there was anybody on in charge or not, could you?

A. No, I couldn't see from the office.

Q. Then if anybody was on there in charge you would not know it from the fact that you were in the office?

A. It would be up to him to attend to the freight if he was looking after it.

Q. Is there anything in those shipping bills or the book that would indicate whether anybody accompanied it or not?

A. No, it is not necessary to put that in this book.

Q. Well, is there anything in the book that would indicate it?

A. No.

Q. By what schedule do you fix the freight on the goods? Have you a schedule of freights?

A. The time—no.

Q. No, the amounts?

A. Why yes, the rate of freight is ten cents per hundred pounds up to one thousand pounds if loaded on a vehicle. And even if it is over one thousand and not loaded on a vehicle it is still the same rate, but if it is over one thousand pounds and loaded on a vehicle the rate is seven and a half cents per hundred pounds.

Q. From that or where do you get that?

A. The schedule of freight charges given to us from the company. We get a schedule on both passenger and property.

Q. And that is taken from the ferry charter?

A. The rates are from the main office.

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Q. You make out the same kind of a bill whether anybody accompanies property or not?

A. Yes, the same forms have to be made out.

Q. Does the party that accompanies freight or property being shipped back and forth pay any fare?

A. Does he pay fare? Yes, he pays fare if the horses and rig are not his own. The charge of forty-five cents for a double rig includes the driver.

Q. Now assuming that he is accompanying freight without any horse or rig?

A. He pays his fare.

Q. Is the rate the same per hundred pounds on property when accompanied by the owner or not accompanied by the owner?

A. Yes the same except that when it is on a vehicle and over one thousand pounds, then it would be seven and a half cents per hundred. His accompanying it would not make any difference.

Q. The Talbot Company are residing in the Canadian Soo?

A. Yes their works are in the Canadian Soo.

Q. And the Pickford Hardware store in there too?

A. Their business is carried on in the Canadian Soo.

Q. The Soo Hardware Company is of Soo, Michigan?

A. Yes of Soo, Michigan.

By Mr. McDONALD:

Q. Where is the fare for ferriage of property accompanied by the owner paid from the Michigan Soo to the Canadian Soo?

A. Paid at the office.

Q. Where at?

A. At the side wicket at the ferry dock in Soo, Mich.

Q. Where are charges paid for transporting property from the Michigan Soo to the Canadian Soo on these ferry boats when unaccompanied by the owner or caretaker?

A. It will be paid at the Michigan dock office when the Canadian dock office is closed. Generally shipments when unaccompanied by the shipper are generally sent collect to the Canadian

75 side, but in the winter all freight has to be prepaid on the Michigan side before goods is sent over. They will not send any collect freight in the winter time.

Q. Then do I understand, Miss Ranson, that during the winter the office of the ferry Company at the dock in the Canadian Soo is closed and all business is done at the ferry Company Dock across on the American side?

A. Yes.

Q. You speak about the winter, will you state what those months are; what do you mean by the term? What months?

A. Well, they have not closed the same date every year.

Q. Well during the past winter of 1911 say the date?

A. 1911, the office closed on the Canadian side the 31st of October; business started on the Michigan side first of November in the year 1911; the office was done away with on the Canadian side.

Q. The American office is open the year round, or as long as the ferry runs?

A. Yes.

Q. You stated that the office of the Canadian side was closed in the year 1911 on the 31st of October, when again does it open for business?

A. It will open—well I can't tell when it will open.

Q. Well in 1910, about when did it close?

A. It closed January 2nd, the day after New Years, in the Canadian Soo.

Q. What date did it open again?

A. The 29th day of April; I think that is the date.

Q. And since the 31st of October, 1911, the business of the Ferry Company has been transacted at the Company's office on the American side?

A. Yes.

76 Redirect examination.

By Mr. MORE:

Q. I call your attention to complainant's Exhibit "D," a shipment of 100 rolls of roofing from the Soo Hardware Co. to H. E. Talbot Co. of Soo, Ontario. This bill is in your hand writing?

A. Yes sir.

Q. You were on duty at the Ferry Dock on the Michigan side when this shipment was made?

A. Yes.

Q. You saw this freight unloaded from the vehicle?

A. Yes.

Q. You saw the driver of the vehicle sign this shipping bill?

Mr. SHINE: That is objected to as leading and suggestive to the witness.

A. Yes.

Q. Did you see this freight put aboard the steamer?

A. Yes, by the deck hands.

Q. Now in regard to the office on the Canadian side closing, what is the reason for that in the winter months—why do they close the Canadian office?

A. That is Mr. Franze business; he does not tell me.

Q. Where are the general offices of the business?

A. On the Canadian side.

Q. Who is the general manager of the Company?

A. Mr. Franze.

Q. Where does he reside?

A. In the Canadian Soo.

Q. You make all your reports to Mr. Franze?

A. No.

Q. You make your reports to the Canadian office?

A. Yes.

Recross-examination.

By Mr. SHINE:

Q. Did one of the managers reside on this side for awhile?

A. Not the managers, not that I know of.

Q. Who were they?

A. The superintendent—Mr. Protzeller, but he is not here

now.

Q. He was superintendent of the ferry business was he—Mr. Protzeller, was he?

A. So far as I know he was; that was his title.

Q. And he resided in the Michigan Soo?

A. I think he stayed at the Colonial hotel; I don't know.

Q. Do you know if it is in the Michigan Soo?

A. I don't know anything about this side; I don't live here.

Q. Do you know if he resided over in the Canadian Soo?

A. I didn't ask him where he lived.

Q. You said you thought he lived in the American Soo?

A. Well so I was told.

Q. That was the general opinion or talk—that he was a resident of the Michigan Soo?

A. Yes.

Q. And for how long, do you know?

A. I don't know.

Q. How long was he superintendent of the ferry business?

A. He took charge after Mr. Kennedy left.

Q. Well when?

A. Oh I don't know; I don't know the exact date that he took charge.

Q. About a year ago?

A. Well I would not say the exact date because I don't know.

Q. Give it approximately?

A. I guess some time in September it would be until October; I guess it would be a year.

Q. From September 1910 to October 1911?

A. Yes, I suppose so.

Q. Is Mr. Thomas from this side a superintendent also of the Ferry Company, if you know?

A. Superintendent of street cars and ferry, yes.

Q. He resides in the American Soo, does he?

A. I guess so, I see him over here.

Q. Who took Mr. Protzeller's place after October?

A. Mr. Thomas.

Q. And that is the Mr. Thomas who is superintendent at the present time?

A. Yes.

78 Q. Now, do you make any report to the superintendent?

A. To Mr. Thomas, yes; we make a report to him every morning; not by 'phone, by letter; taken up by the mail boy.

Q. Do you address it?

A. To, Mr. Thomas, yes.

Q. And are these reports addressed to him at Sault Ste. Marie, Michigan?

A. Yes, at the car barn.

Q. These are the reports that go out from the Michigan side?

A. They are the trip reports.

Q. Reports of the ferry boat?

A. Yes.

Q. And they are sent out from the office on the Michigan side?

A. Yes, the Captain brings it in and we add the total earnings to it.

Q. Are similar reports sent out from the Canadian side to Mr. Thomas?

A. Yes, when the office is open.

Q. And the same way to Mr. Protzeller when he was superintendent?

A. Yes, telling him the number of passengers.

Q. These reports were as to number of passengers and property that was transferred on each trip?

A. Not on each trip—for the day.

Q. When Mr. Protzeller was in charge there as superintendent you sent reports to him?

A. Yes, I just told you that.

Q. You address your reports now to Mr. Thomas—addressed to him at Sault Ste. Marie, Michigan?

A. Yes.

Redirect examination.

By Mr. MOORE:

Q. The reports you make to Mr. Thomas, and which you formerly made to Mr. Protzeller, are showing the operations of the ferry boat for that day?

A. Yes.

Q. The cash collections that you make are turned in to the Bank of Montreal on the Canadian side and deposited to the credit of the International Transit Company?

A. Yes.

Recross-examination.

By Mr. McDONALD:

Q. You know Captain Henry K. Pocock of the Bawating?

A. Yes.

Q. And he was Captain of the boat for a long time?

A. Yes.

Q. About how long?

A. Ever since I came until just lately.

Q. He resided during all of that time in the Michigan Soo?

A. Yes, that is his home now.

79 Q. The other boat—how long since the other boat has been doing business, has it been tied up or engaged in the ferry business lately?

A. The Algoma, I guess has just been back out this month.

Q. How long before this time was it tied up to the dock?

A. You will have to ask Mr. Thomas; I wouldn't say; that didn't interest me.

Q. Has it been engaged in the business during the past year off and on?

A. Yes.

Q. Mr. Thomas that you refer to has the hiring and discharging of employees on the ferry boats?

A. You would have to ask the Captain; I haven't anything to do with the men or know anything about it.

Q. The Captain would hire the men?

A. Very likely; I think the master of a ship hires his own men.

Q. But who hires and discharges the Captain?

A. I don't know; you would have to ask Mr. Frauze.

Q. Then you do not know of your own knowledge?

A. No, my place is in the office; I have nothing to do with the men—the hiring of them, their hours of duty or anything of that kind.

Q. I believe you stated, Miss Ranson, that you live in the Canadian Soo—

A. Yes.

Q. But you are at present working for the company at the Company's office at their dock in the Michigan Soo?

A. Yes.

Q. Of course, there is not as much travel in the winter months on the ferries; there are not as many passengers travelling on the ferry in the winter as in the summer, are they?

A. No they walk.

80 O. The difficulty of transportation is greater in crossing the river between the two Soos in the winter than in the summer?

A. Yes, slush ice, and liable to loose a bucket or something like that.

Q. The operation of the boat is more difficult between these two points on the river by reason of ice?

A. Yes, we run to the government dock now because we cannot get to the ferry dock.

(Signed)

EVELYN RANSON.

Subscribed and sworn to before me this 22nd day of January, A. D. 1912.

[NOTARY SEAL.]

A. G. OLD,

Notary Public, Chippewa Co., Mich.

My Commission expires July 12, 1912.

STATE OF MICHIGAN,
County of Chippewa, ss:

I, A. G. Old, a Notary Public in and for said County and State, duly commissioned and qualified, and before whom the foregoing

deposition was taken, in accordance with a stipulation between the respective parties which is hereunto attached, do hereby certify that the above named witness, Evelyn Ranson, whose deposition is hereunto attached, was produced as a witness on the part of Complainant, and before testifying was by me duly sworn to testify to the truth, the whole truth and nothing but the truth, and that the deposition by her subscribed as above set forth, was taken stenographically and transcribed by me, and was read over and signed by the witness.

81 I do further certify that the said deposition was taken at the time and place therein specified, and that the parties were represented at the taking of said deposition by counsel as above set forth.

I do further certify that said deposition is true and correct according to the testimony of said witness given and is correctly transcribed and set forth.

In witness whereof I have hereunto set my hand this 23rd day of January, A. D. 1912.

[NOTARY SEAL.]

A. G. OLD,

Notary Public, Chippewa Co., Mich.

My Commission expires July 12, 1912.

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COMP. EX. "A."

This Company will not be responsible for any goods mis-sent, unless they are properly addressed and consigned to a Station on its Railway. Rates, weights, Quantities and description of goods entered on Receipts of Shipping Bills are not binding on the Company, and will not be acknowledged. All goods going to or coming from any place out of Canada will be subject to Customs charges, etc.

THE INTERNATIONAL TRANSIT CO.

Soo, Mich. Date, 11/3, 1911.

The Algoma Central and Hudson Bay Railway Company will please receive the undermentioned property, in apparent good order, addressed to A. F. Pickford, Soo, Ont., to be forwarded by the said Company to — Station subject to the terms and conditions of the current tariff and classification and to those stated above and to those upon the other side of this Shipping Bill which is delivered to the said Company by the Consignor or his Agent as the basis upon which its receipt is to be given for said property, and agreed to by the consignor as a special contract in respect thereof.

A charge will be made when cars are delayed in loading or unloading.

No. of packages and species of goods.	Marks.	Quantity or weight, lbs., said to be—	Back or advance charges.
4 Sash Weights.....	316	....
1 pkg. Shoe Polish.....	35	....
		<hr/> 351	35 cts.

Attention is called to the special contract above mentioned, and printed on the other side of this shipping bill.

(Signed) **WILL HEWITT**, *Consignor*.

SPECIAL NOTICE.—A charge of not less than \$1.00 per car per day, or fraction thereof, will be made when cars are delayed beyond forty-eight hours in loading or unloading.

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Ex. B. A. G. O.

(Form 33.)

International Transit Co.

No. 12550.

SAULT STE. MARIE, MICH., ONT., 11-3-1911.

Forwarded by steamer by Gowan Hardware Co. as shipper the following described articles:

Address **A. F. Pickford & Co., Soo, Ont.**

Articles.			Charges.	
No.	Description.	Weight.	Prepaid.	Collect.
4	Sash weights	351	35	....
1	Pkg. Shoe Polish.	351		....
Paid.			— — —, <i>Shipper.</i>	
			— — —, <i>Agent.</i>	

This copy to remain with forwarding agent.

84

COMP. EX. "C."

Station.	Date.	Pro. No.
Mich. Ferry Dock	11-3/11.	
M A. F. Pickford & Co.		Boat.

Order as to the disposal of the undermentioned freight.

Int. Transit Co.

From.	Way bill date and number.	Car initials and number.
	12550	

Shipper.	No. of pkgs. & description of articles.	Weight.	Rate.	Freight.
	4 Bdls. Sack	351	10	35
	1 Pkg. Polish			

Advances Wharfage.

Total to Collect.

Paid.

Deliver to — Del'd by **M. Rosenthal.**

— — —, *Consignee,*
Per — — —.

A charge will be made when cars are delayed beyond the time allowed by this Company for loading and unloading.

All freight transported by this Company is subject to its published terms and regulations. All claims for overcharge must be sent to the Traffic Manager, Sault Ste. Marie, Ont.

This freight will be delivered only on presentation of this bill. See Bill of Lading for conditions of carriage.

85 This Company will not be responsible for any goods mis-sent unless they are properly addressed and consigned to a station on its Railway. Rates, Weights, quantities and description of goods, entered on Receipts of Shipping Bills are not binding on the Company, and will not be acknowledged. All goods going to or coming from any place out of Canada will be subject to Customs Charges, etc.

The International Transit Co.
Soo, Mich.

Date Nov. 6, 1911.

The Algoma Central and Hudson Bay Railway Company will please receive the undermentioned Property, in apparent good order, addressed to H. E. Talbot Co., to be forwarded by the said Company to Soo, Ont., Station subject to the terms and conditions of the current tariff and classification and to those stated above and to those on the other side of this Shipping Bill which is delivered to the said Company by the Consignor or his agent as the basis upon which its receipt is to be given for said Property, and agreed to by the Consignor as a special contract in respect thereof.

A charge will be made when cars are delayed in loading or unloading.

No. of packages and species of goods.	Marks	Quantity or weight lbs. said to be.	Back or advance charges.
100 rolls roofing.....	5000 #	5.00

Paid.

Comp. Ex. "D."

Attention is called to the special contract above mentioned, and printed on the other side of this Shipping Bill.

(Signed)

PERCY FOX, *Consignor.*

SPECIAL NOTICE.—A charge of not less than \$1.00 per car per day, or fraction thereof, will be made when cars are delayed beyond forty-eight hours in loading or unloading.

COMP. EX. "E."

(Form 33.)

International Transit Co.

No. 12561.

SAULT STE. MARIE, 11-6-1911.

Forwarded by Steamer by Soo Hardware Co. as shiper the following described articles: Address H. E. Talbot Co., Soo, Ont.

Articles.			Charges.	
No.	Description.	Weight.	Prepaid.	Collect.
100	rolls Roofing.....	5000	5.00	....
			— — —, Shipper.	
			— — —, Agent.	

This copy to remain with forwarding agent.

87	Station.	Date.	Pro. No.
	Mich. Ferry Dk.	11-6-11.	
	H H. E. Talbolt Co.		Boat.

Order as to the disposal of the undermentioned freight.

Int. Transit Co.

Form. Way bill date and number. Car Initials and Number.
Soo Hdw. Co. 12561.

Shipper.	No. of Pkgs. and description of articles.	Weight.	Rate.
	100 rools Roofing.	5000	10

Freight.	Advances.	Wharfage.	Total to collect.
500			

Paid.
Comp. Ex F.

Deliver to — Del'd by —

Per THOMAS GREGCUMZA.
— — —, Consignee.

A charge will be made when cars are delayed beyond the time allowed by this Company for loading and unloading.

All freight transported by this Company is subject to its published terms and regulations. All claims for overcharge must be sent to the Traffic Manager, Sault Ste. Marie, Ont.

This freight will be delivered only on presentation of this bill. See Bill of Lading for conditions of carriage.

88 Endorsed: Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants. Deposition of Evelyn Ranson. Opened and filed by Order of Court this 31st day of January, 1912, Chas. L. Fitch, Deputy Clerk.

89 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.
CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

It is hereby stipulated by Solicitors for the respective parties to this cause, that the Answer of the defendants heretofore filed in this cause may be and the same is hereby taken for and considered as the Answer of said Defendants to the amended bill of Complaint filed herein, for all purposes of this case.

Dated Jan. 31, 1912.

BOYNTON, McMILLAN, BODMAN &
TURNER,

Solicitors for Complainant.

F. T. McDONALD,

Solicitor for Defendants.

Endorsed: No. 228. Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder and Edgar J. Swart, Chief of Police, Defendants. Stipulation. Filed January 31, 1912. Chas. L. Fitch, Deputy Clerk. F. T. McDonald, City Att'y and solicitor for D'f'ts. John W. Shine, of Counsel.

90 Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

Stipulation of Facts.

It is hereby Stipulated and Agreed by and between the Complainant and the Defendants in this cause, through their respective solicitors, that the allegations of facts contained in the following paragraphs of the Answer are hereby admitted for the purposes of this case and shall stand as proof of the matters alleged.

Paragraph 3, Subdivision (a) That the two steam vessels mentioned in paragraph 3 of Complainant's bill are ferryboats operated by Complainant generally in the ferriage of persons, baggage and property across St. Mary's River, and from the City of Sault Ste. Marie, Michigan, to the opposite or Canadian shore of said river; that said boats are called the Bawating and Algoma respectively; that the tonnage of each of said boats will not exceed 200 net tons; that said boats are small vessels constructed and equipped for ferry business and not suitable to engage in the general passenger and freight traffic on the Great Lakes.

Paragraph 3, Subdivision (b). That St. Mary's River is a navigable stream connecting Lakes Superior and Huron and is navigated by large vessels up and down stream on their way to 91 points on Lake Superior and Lake Huron and the lower chain of lakes; that no vessel other than ferry boats are engaged in transporting persons or property across said river between the aforesaid cities. That the international boundary line between the United States and the Dominion of Canada is located near mid-stream in said river and about 1460 feet from the shore line of said river at complainant's Ferry dock in said City of Sault Ste. Marie, Michigan, and that the distance across said river from said Ferry dock to the opposite shore is about 2550 feet.

Paragraph 3, Subdivision (c). Admitted as alleged except that the words "General Manager" should read "Superintendent."

Paragraph 3, Subdivision (d). All of the matters alleged in said subdivision.

Paragraph 3, Subdivision (e). All of said subdivision except the following: "And subject to the police regulations thereof under its charter authority," which is a question of law.

Paragraph 5, Subdivision (a). As alleged.

Paragraph 6, Subdivision (a). All of said subdivision as alleged.

Paragraph 8, Subdivision (a). The charter provisions set forth in said subdivision are admitted to be true and correct.

Paragraph 9, Subdivision (a). That the criminal complaint

against Henry A. Pocock, a copy of which is annexed to the Answer and marked Exhibit "B," is a true and correct copy of the original.

Paragraph 10, Subdivision (a). All of the matters set forth in said subdivision, and further that the copy of the Justice's return on appeal annexed to the Answer and marked exhibit "C" is a true and correct copy of the original.

92 It is further stipulated that the following documentary proofs offered by the complainant may be offered in evidence at the hearing without any objection to their genuineness of their execution, or for any other reason, except as to their materiality.

1. Certified copy of Letters Patent incorporating the International Transit Company, Limited, dated the 18th day of March, 1901.

2nd. Certified copy of supplementary letters patent extending the powers of the International Transit Co., dated the 12th day of August, 1902.

3. A lease from the Michigan Lake Superior Power Co. to the International Transit Co., dated the 11th day of July, 1903, with tracing of plan of the west Power House Dock, and it is further stipulated that a copy of said Lease and a blue print of said plan may be substituted for the original as a file in the case.

4. Certified copy of Letters Patent issued by the King of Great Britain and Ireland to the International Transit Co., to operate a "King's Ferry" across the St. Mary's River between the City of Sault Ste. Marie, Ontario, and Sault Ste. Marie, Michigan, dated the 7th day of April, A. D. 1906.

5. A certificate of British registry of the Steamer "Bawating," dated at Sault Ste. Marie, Ontario, the 11th day of November, A. D. 1910, and further that a copy of said original certificate may be substituted for the original as a file in the case.

6. A certificate of British registry of the Steamer "Algoma," dated at Sault Ste. Marie, Ontario, the 12th day of August, 1901, and further that a copy of said original certificate may be substituted for the original as a file in the case.

7. A certified copy of a certificate of inspection of hulls and equipment for a steamer carrying passengers or for freight boat of or over 150 tons gross for the steamer Algoma, dated at Collingwood, Ontario, Canada, the 23rd day of August, 1911.

8. A certified copy of a certificate of inspection of hulls and equipment for a steamer carrying passengers or for freight boat of or over 150 tons gross for the steamer Bawating, dated at Collingwood, Ontario, Canada, the 23rd day of August, 1911.

9. A certified copy of a certificate of examination for foreign passenger steamer Algoma issued at the port of Marquette, Mich., dated the 29th day of August, 1911.

10. A certified copy of a certificate of examination for foreign passenger steamer Bawating, issued at the port of Marquette, Michigan, dated the 29th day of August, 1911.

11. It is further stipulated and agreed that the amount in controversy in this suit exceeds the value of the sum of Two Thousand Dollars exclusive of interest and costs.

12. It is further stipulated that the International Transit Company owns and uses for landing its boats in the City of Sault Ste. Marie, Ontario, a private dock and landing place owned by it.

(S'd) BOYNTON, McMILLIAN, BODEMAN &
TURNER,

Solicitor for Complainant.

F. T. McDONALD,

Solicitor for Defendants.

94 Endorsed: No. 228. Circuit Court of the United States for the Western District of Michigan; Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants. General Stipulation. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

95 WEDNESDAY, January 31, 1912.

The Court met pursuant to adjournment.

Present, the Honorable Clarence W. Sessions, District Judge.

Northern Division.

No. 228.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

On application and by consent of counsel for the respective parties, it is ordered that all depositions heretofore received in this cause be opened and that publication thereof do pass in the Clerk's office.

LUMB EXHIBIT No. 1.

1910.

Month.	Mo. of spment.	Weight, lbs.
Jan. ....	.58	359.46
Feb. ....	.70	408.78
Mar.	1.13	862.65
April ....	.99	937.47
May	1.16	880.16
June	1.30	1179.12
July ....	.88	1095.72
Aug.	1.21	1289.88
Sept.	1.42	1530.54
Oct.	1.13	1063.81
Nov.	1.17	1175.69
Dec.	1.15	757.66
	<hr/> 12.82	<hr/> 11531.94

1911.

Jan. ....	.66	532.98
Feb. ....	.74	758.37
Mar.	1.00	836.59
April	1.17	1242.94
May	1.71	1507.16
June	1.39	1592.56
July	1.67	1670.40
Aug.	1.86	1948.30
Sept.	1.42	1606.31
Oct.	1.79	1507.73
Nov.	1.38	1297.87
Dec.	1.12	1807.11
	<hr/> 15.91	<hr/> 16308.32

Endorsed: No. 228. The District Court of the United States.
for the Western District of Michigan, Northern Division. In Equity.
Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

97

(Copy.)

Form 989. File No. V-77.

This Certificate expires August 19, 1912.

United States of America,
Department of Commerce and Labor,
Steamboat Inspection Service.

Certificate of Examination for Foreign Passenger Steamer of Country Having Steamboat Inspection Laws Approximating Those of the United States.

Authority of Act of Congress approved March 17, 1906, amending Section 4400, Revised Statutes of the United States.

Foreign (Canadian) Passenger Steamer Bawating.

Port of Marquette, Michigan.

This is to certify that the undersigned are satisfied that the condition of the boilers, machinery, hull, and equipments of the "Bawating," passenger steamer, of Sault Ste. Marie, Ontario, is as represented by the Canadian certificate of inspection expiring on the 19th day of August, 1912, and in accordance with the provisions of Section 4400 of the Revised Statutes of the United States, and the order of the Secretary of Commerce and Labor issued relative to said passenger vessels, said vessel, in plying to and from ports in the United States, is admitted to the exemptions and benefits provided by the said section 4400 of the Revised Statutes and the said order of the Secretary, relating to the inspection of boilers, machinery, hull, and equipments, until the 19th day of August, 1912, when the Canadian certificate above mentioned expires.

Dated at Marquette, Michigan, this 29th day of August, 1911.

(Signed)

CHARLES M. YORK,

Inspector of Hulls.

(Signed)

CHAS. M. GOODING,

Inspector of Boilers.

98

STATE OF MICHIGAN,

County of Marquette, ss:

Subscribed and sworn to before me this 29th day of August, 1911.

(Signed)

ELMER H. BECKTELL,

[SEAL.]

Notary Public.

My Commission expires April 13, 1914.

Office of United States Local Inspectors,
Steamboat Inspection Service,
Port of Marquette, Michigan.

JANUARY 17, 1912.

We hereby certify that the above certificate is a true copy of the original issued by this office to the vessel named herein.

CHARLES M. YORK,
Inspector of Hulls.
CHAS. M. GOODING,
Inspector of Boilers.

This form of certificate of examination was adopted by the Board of Supervising Inspectors, Steam-boat-Inspection Service, on February 7, 1911, and approved by the Secretary of Commerce and Labor on March 8, 1911.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 2. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

99

(Copy.)

Form 989. File No. V-76.

This Certificate Expires August 18, 1912.

United States of America,

Department of Commerce and Labor,

Steamboat Inspection Service.

Certificate of Examination for Foreign Passenger Steamer of Country Having Steamboat Inspection Laws Approximating Those of the United States.

Authority of Act of Congress approved March 17, 1906, amending Section 4400, Revised Statutes of the United States.

Foreign (Canadian) Passenger Steamer Algoma.

Port of Marquette, Michigan.

This is to certify that the undersigned are satisfied that the condition of the boilers, machinery, hull, and equipments of the "Algoma," passenger steamer, of Sault Ste. Marie, Ontario, is as represented by the Canadian Certificate of Inspection expiring on the

18th day of August, 1912, and in accordance with the provisions of Section 4400 of the Revised Statutes of the United States, and the order of the Secretary of Commerce and Labor issued relative to said passenger vessels, said vessel, in plying to and from ports in the United States, is admitted to the exemptions and benefits provided by the said section 4400 of the Revised Statutes and the said order of the Secretary, relating to the inspection of boilers, machinery, hull, and equipments, until the 18th day of August, 1912, when the Canadian certificate above mentioned expires.

Dated at Marquette, Michigan, this 29th day of August, 1911.

(Signed)

CHARLES M. YORK,

Inspector of Hulls.

CHAS. M. GOODING,

Inspector of Boilers.

100 STATE OF MICHIGAN,
County of Marquette, ss:

Subscribed and sworn to before me this 29th day of August, 1911

(Signed)

ELMER H. BECKTELL,

Notary Public.

[SEAL.]

My Commission expires April 13, 1914.

Office of United States Local Inspectors,

Steamboat Inspection Service,

Port of Marquette, Michigan.

JANUARY 17, 1912.

We hereby certify that the above certificate is a true copy of the original issue by this office to the vessel named herein.

CHARLES M. YORK,

Inspector of Hulls.

CHAS. M. GOODING,

Inspector of Boilers.

This form of certificate of examination was adopted by the Board of Supervising Inspectors, Steam-boat Inspection Service, on February 7, 1911, and approved by the Secretary of Commerce and Labor on March 8, 1911.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 3. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

101

Copy.

Form S.

DOMINION OF CANADA,
Department of Marine and Fisheries:

Certificate of the Inspector of Hulls & Equipment for a Steamboat to Carry Passengers, or for a Freightboat of or Over 150 Tons Gross.

Having examined the hull and equipment of the steamboat "Bawating" of Sault Ste. Marie, whereof the International Transit Co., of Sault Ste. Marie are owners, on this 19th day of August A. D. 1911.

The particulars of her gross and register tonnage as shown on her certificate of registry, being as follows:—

Tonnage under tonnage deck	154.15 Tons
Total gross tonnage	254.71 Tons
Register tonnage	166.79 Tons
Houses on deck	91.56 "
Deduct for engine room	72.92 "

I, S. D. Andrews Inspector of hulls and equipment, do hereby certify that her hull is in all respects staunch, seaworthy and in good condition for navigation; that the equipment of the vessel throughout is in conformity with the requirements of Part VII of the Canada Shipping Act respecting Steamboat Inspection, the said Steamboat having on board, properly placed and in good order for immediate service:—boats, having together a carrying capacity for — persons, 4 lifeboats, having together a carrying capacity for 40 persons, 730 life preservers, 2 life rafts, capable of carrying 16 persons, 18 fire buckets, 4 axes, 6 lanterns, 3 life buoy-, having a proper heaving line attached, and that she has the fire pumps, hose and other appliances for extinguishing fire, required by the said Part, and placed as therein provided, and in every way efficient and according to the requirements of said Part; and I further certify that the said steamboat is permitted to run on the waters between Point Iroquois and Bruce Mines from this 19th day of August to the 19th day of August 1912 and that she is adapted and fit to carry 531 passengers and no more.

Dated at Collingwood this 23rd day of August 1911.

(Signed)

S. D. ANDREWS,
Inspector of Hulls and Equipment.

Certificate of the Inspector of Boilers and Machinery for the Same Boat.

And I, E. W. McKean, Inspector of boilers and machinery, do hereby certify that the engine, boiler and machinery of the steamboat Bawating are sufficient and suitable to authorize her being lawfully employed* in carriage of passengers without hazard to life on

the route between Point Iroquois and Bruce Mines from this 19th day of August to the 19th day of August 1912, that the engine of said steamboat is of 28.1 nominal horse power and that her boiler can carry with safety 77 pounds of steam pressure per square inch, and no more.

Dated at Collingwood this 23rd day of August 1911.

(Signed)

E. W. McKEAN,
Per S. D. ANDREWS,
Inspector of Boilers and Machinery.

*Here insert "in carriage of passengers" or "as a freight boat" or "as a ferry boat" as the case may be.

In case of Accident or any material damage affecting the seaworthiness or efficiency of the vessel, either in the hull or in any part of the machinery, a report by letter signed by the owner or master is to be forwarded to the Inspector, at the earliest opportunity after the occurrence, under penalty not exceeding \$500, Section-591 and 657 Part VLL of the Canadian Shipping Act. Certificate Correct.

(Signed)

E. W. McKEAN.

103 Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 4. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

104

Copy.

Form S.

Dominion of Canada.

Department of Marine and Fisheries.

Certificate of the Inspector of Hulls & Equipment for a Steamboat to Carry Passengers, or for a Freightboat of or Over 150 Tons Gross.

Having examined the hull and equipment of the steamboat "Algoma" of Sault Ste. Marie, whereof the International Transit Co., of Sault Ste. Marie are owners, on this 18th day of August A. D. 1911.

The particulars of her gross and register tonnage as shown on her certificate of registry, being as follows:—

Tonnage under tonnage deck.....	99.36 Tons
Total gross tonnage.....	156.78 Tons
Register tonnage.....	106.62 Tons
Houses on deck.....	57.42 "
Deduct for engine room.....	50.16 "

I, S. D. Andrews Inspector of hulls and equipment, do hereby certify that her hull is in all respects staunch, seaworthy and in good condition for navigation; that the equipment of the vessel throughout is in conformity with the requirements of Part VII of the Canada Shipping Act respecting Steamboat Inspection, the said Steamboat having on board, properly placed and in good order for immediate service: — boats, having together a carrying capacity for — persons, 3 lifeboats, having together a carrying capacity for 52 persons, 516 lifepreservers, — life rafts, capable of carrying — persons, 25 fire buckets, 5 axes, 6 lanterns, 5 life buoy-, having a proper heaving line attached, and that she has the fire pumps, hose and other appliances for extinguishing fire, required by the said Part, and placed as therein provided, and in every way efficient and according to the requirements of said Part; and I further certify that the said steamboat is permitted to run on the waters
 105 between Point Iroquois and Bruce Mines from this 18th day of August to the 18th day of August 1912 and that she is adapted and fit to carry 500 passengers and no more.

Dated at Collingwood this 23rd day of August 1911.

(Signed)

S. D. ANDREWS,
Inspector of Hulls and Equipment.

Certificate of the Inspector of Boilers and Machinery for the Same Boat.

And I, E. W. McKean, Inspector of boilers and machinery, do hereby certify that the engine, boiler and machinery of the steamboat Algoma are sufficient and suitable to authorize her being lawfully employed in carriage of passengers without hazard to life on the route between Point Iroquois and Bruce Mines from this 18th day of August to the 18th day of August 1912, that the engine of said steamboat is of 54 nominal horse power and that her boiler can carry with safety 152 pounds of steam pressure per square inch, and no more.

Dated at Collingwood this 23rd day of August 1911.

(Signed)

E. W. McKEAN,
 Per S. D. ANDREWS,
Inspector of Boilers and Machinery.

*Here insert "in carriage of passengers" or "as a freight boat" or "as a ferry boat" as the case may be.

In case of accident or any material damage affecting the seaworthiness or efficiency of the vessel, either in the hull or in any part of the machinery, a report by letter signed by the owner or master is to be forwarded to the Inspector, at the earliest opportunity after the occurrence, under penalty not exceeding \$500, Section- 591 and 657 Part VII of the Canadian Shipping Act. Certificate correct.

(Signed)

E. W. McKEAN.

106 Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 5. Filed Jan. 31 1912, Chas. L. Fitch, Deputy Clerk.

107 Registry Form No. 9.

Certificate of British Registry.

Particulars of Ship.

Official number.	Name of ship.	No., date & port, or register.		
11803.	Algoma.	8/1901. Sault Ste. Marie.		
Whether British or British built.	Whether a sailing or steam ship; and if steam ship, how propelled.	Where built.	When built.	Name and address of builders.
British.	Steam Screw.	Toronto, Ontario.	1901.	Polson Iron Works, Toronto.

Feet. Tenths.

Number of Decks.....	One	Length from forepart of stem, under the bowsprit, to the aft side of the head of the stern post	104	
Number of Masts.....	None	Length at quarter of depth from top of weather deck at side amidships to bottom of keel		
Rigged	Steamer	Main breadth to outside of plank	26	3
Stern	Elliptic	Depth in hold from tonnage deck to ceiling at amidships...	11	
Build	Dipped Steel	Depth in hold from upper deck to ceiling at amidships, in the case of three decks and upwards.....		
Galleries	None	Depth from top of beam amidships to top of keel.....		
Head	Plain	Depth from top of deck at side amidships to bottom of keel		
Framework and description of Vessel	Steel	Round of beam.....		
Number of Bulkheads....		Length of engine room (if any)		
Number of Water Ballast Tanks and their capacity in tons				

Particulars of Displacement.

	Tons.		Tons.
Total to quarter the depth from weather deck at side amidships to bottom of keel		Ditto per inch immersion at the same depth.....	

Particulars of Engines (if any).

No. of engines.	Description.	Whether British or foreign made.
One.	Fore & Aft Compound.	British.
108		
When made.	Name and address of makers.	No. of & di- ameter of cylinders.
Engines.	Engines.	Length of strike.
1901.	Polson Iron	H. H. P. I. H. P.
Boilers.	Works, Toronto. 18" & 36" Boilers.	Speed of ship.
		54 H. H. P.

Particulars of Tonnage.

Gross tonnage.		Deduction allowed.	No. of tons.
Under Tonnage Deck..	99.36	On account of space re- quired for propelling power	50.16
Closed in spaces above the tonnage deck (if any)		On account of spaces oc- cupied by seamen or apprentices and appro- priated to their use, and kept free from Goods or stores of every kind, not being the personal property of the crew	
Space or Spaces between Decks		These spaces are the fol- lowing, viz:	
Poop		Deductions under sec. 79 of the Merchants Ship- ping Act, 1894, as fol- lows	50.16
Forecastle			
Round House			
Other closed in spaces (if any) as follows:			
Cabin & Wheel House..	57.42		
Spaces for Machinery and Light and Air, under sec. 78 (2) of the Merchant Ship- ping Act, 1894, if re- quired			
Gross Tonnage	156.78		
Deductions as per con- tra	50.16		
Registered Tonnage ...	106.62		

I, the undersigned Registrar of Shipping at the Port of Sault Ste. Marie, hereby certify that the Ship, the description of which is prefixed to this, my certificate, has been duly surveyed, and that the above description is true; that ———— whose Certificate of Competency or Service is No. — is the Master of said Ship; and that the name, ————, Residence and description of the Owner, —, and Number of Sixty-fourth Shares held by him are as follows:—

Name, residence and occupation
of owner.

Number of sixty-fourth
shares.

Robert Adam Lyon, Sault Ste.
Marie, Ontario. Banker.

Owner of sixty-four shares.

Dated at Sault Ste. Marie the 12th day of August, one thousand nine hundred and one.

H. PLUMMER,
Register of Shipping.

This vessel was transferred to the International Transit Co. 3rd May, 1903, Owners of Sixty-four Shares.

H. PLUMMER, *Registrar.*

109 Endored: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Complaint's Exhibit No. 6. Filed Jan. 31 1912, Chas. L. Fitch, Deputy Clerk.

I, the undersigned Registrar of Shipping at the Port of Sault Ste. Marie hereby certify that the Ship, the description of which is prefixed to this my certificate, has been duly surveyed, and that the above description is true, that H. A. Pocock, whose Certificate of Competency or Service is No. 34149 is the master of the said ship; and that the Name, Residence and Description of the Owners, and number of Sixty-fourth Shares held by them are as follows:

Name, residence and occupation of the owner.

Number of sixty-fourth shares.

International Transit Company,
Sault Ste. Marie, Ontario.

Owners of Sixty-fourth shares.

Dated at Sault Ste. Marie the 11th day of November, one thousand nine hundred and ten.

H. PLUMMER,
Registrar of Shipping.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 7. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

112

Copy.

Agreement Between the Michigan Lake Superior Power Co. and the International Transit Co. re Lease of West Power Dock, July 11th, 1903.

113

It is hereby agreed between The Michigan Lake Superior Power Company, the party hereto of the first part: and The International Transit Company, the party hereto of the second part, as follows:—

The said party of the First Part in consideration of the rents and covenants herein specified does hereby let and lease to the said party of the Second Part the following described premises, situate and being in the City of Sault Ste. Marie, in the County of Chippewa and State of Michigan, and known as The Michigan Lake Superior Power Company's West Power Dock, extending north from the west end of the present Power House, for the term of twenty years from and after the First day of April 1903, on the terms and conditions hereinafter mentioned:

Provided that in case any rent shall be due and unpaid or if default shall be made in any of the covenants herein contained then it shall be lawful for the said party of the First Part, its certain attorneys, representatives, successors and assigns to re-enter into and repossess the said premises and the said party of the Second Part and each and every occupant to remove and put out:

And the said party of the Second Part does hereby hire the said premises for the term of twenty years as above mentioned, and does covenant and promise to pay to the said party of the First Part, its

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representatives and assigns, for rent of said premises for said *premises* for said term the sum of \$50.00 (Fifty Dollars) per month, payable on the first day of each and every month during the term hereby created; the first of said payments to become due and to be made from the first day of July 1903:

114 The said party of the Second Part further covenants that it will not assign or transfer this lease, or sublet the said premises or any part thereof without the written consent of the said party of the First Part:

And also that the said party of the Second Part will at its own expense during the continuance of this lease keep the said premises and every part thereof in as good repair, and at the expiration of the term yield and deliver up same in like condition as when taken, reasonable use and wear thereof and damage by the elements excepted.

And the said party of the First Part does covenant that the said party of the Second Part on paying aforesaid instalments and performing all the covenants aforesaid shall and may peaceably and quietly Have, Hold and Enjoy the said demised premises for the term aforesaid:

Notwithstanding anything hereinbefore provided it is nevertheless Agreed and Understood by and between the parties that the party of the First Part may at any time determine the tenancy upon giving six months' notice in writing of its intention so to do, and upon the expiry of said notice the term hereby created shall be determined and ended, and the party of the Second Part shall deliver up possession of the premises:

The conditions, covenants and agreements made and entered into by the several parties hereto are declared binding on their respective representatives, successors and assigns.

Witness their hands and seals this Eleventh day of July 1903.

THE MICHIGAN LAKE SUPERIOR
POWER CO.,

By "C. SHIELDS,"
Per "W. COYNE,"

President.

THE INTERNATIONAL TRANSIT
COMPANY,

By "C. SHIELDS,"
Per "W. COYNE,"

President.

Signed, sealed and delivered in the presence of—

"T. E. DONAGHUE."

(Here Follows Blue Print Marked P. 114½)

115 Endorsed: The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 8. Filed Jan. 31 1912, Chas. L. Fitch, Deputy Clerk.

116 Charles J. Jones, Deputy Governor, Canada.

Edward the Seventh, by the Grace of God, of the United Kingdoms of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to all to whom these presents shall come, Greeting:

Know Ye, that under and by virtue of the powers vested in us, in and by the revised statutes of Canada, Chapter ninety seven, intituled "An Act respecting Ferries" and the Act in amendment thereof, and by and with the advice of our Privy Council for Canada, we have for and in consideration of the rents and subject to the provisos and conditions hereinafter reserved and contained, and on the part of the Licensee hereinafter named its successors and assigns, to be paid, observed, performed and abided by, Given and Granted; and we do by these Presents give and grant unto the International Transit Company of Sault Ste. Marie, in the Province of Ontario, hereinafter called the Licensee, its successors and assigns the exclusive right, liberty and privilege of operating our ferry across the St. Mary's River between Sault Ste. Marie in Algoma, in the Province of Ontario and Sault Ste. Marie in the State of Michigan in the United States of America.

To Have and to Hold the said exclusive right liberty and privilege unto the said Licensee, its successors and assigns, for and during the term of ten years, to commence and be computed from the first day of May in the Year of our Lord one thousand nine hundred and six yielding and paying therefor yearly and

117 every year in advance during the said term to us, our successors and assigns, on the First day of May in each and every year, the clear yearly rental or sum of One hundred Dollars, the first of such payments to become due and be made on the first Day of May in the year of our Lord One thousand nine hundred and six.

Provided Always and these presents are upon and subject to the provisos and conditions hereinafter expressed and contained, that is to say:

1. Limits.—The Limits of the Ferry shall be co-terminus with the Limits of the town of Sault Ste. Marie, Ontario, to a point in the Town of Sault Ste. Marie, Michigan, to be fixed by the Municipal authorities of that place.

2. Landing Stages and Wharves.—Suitable landing wharves or docks shall be secured and at all times maintained by the Licensee at some central point in the said town of Sault Ste. Marie, Ontario, which must be safe and available at all *states* of the river and subject to the approval of the Department of Inland Revenue.

3. Vessels.—The vessels to be used shall be substantial and seaworthy and capable of carrying safely and commodiously all the

traffic that offers between the two towns. They must be provided with engines of sufficient effective horse power and be high pressure, and the vessels and engines shall be subject to the approval of the Dominion Inspector of Steamboats.

4. Conveyance of Contraband Goods.—The Licensee shall not at any time carry or convey or permit or suffer to be carried or conveyed over the said Ferry any contraband article whatsoever.

5. Observance of Custom- and Revenue Laws.—The Licensee shall observe all Customs and Revenue Laws of the Dominion of Canada and of the United States of America.

118 6. Hours of Running.—During the period commencing on the first of June and ending the thirtieth of September in each and every year, the Ferry shall commence running at 7 o'clock A. M. and shall continue to cross every thirty minutes thereafter until 9 o'clock P. M. by central standard time (Sundays excepted) except in the case of unfor-seen Marine casualties, fogs, or unavoidable circumstances, and from the first of November until the close of Navigation until 8 o'clock P. M. central standard time.

7. Tariff of Fares.—The charges for fares and tolls to be made on the said Ferry, shall not at any time exceed the following, that is to say: For foot passengers each way adults 10¢. For foot passengers each way, children 5¢. for horse and rider each way 25¢. For horse, each way 25¢—for one horse and vehicle and driver each way 35¢—for each additional horse and passenger—10¢—for each head of horned cattle, each way 25¢—for each sheep or hog, each way—5¢. For each 100 lbs. baggage or other articles each way 10¢.

8. Posting Notice of Tariff.—Notices of the rates of Fares and Tolls on the said ferry, shall be put up and kept up and exhibited at all times in a conspicuous place on or near the said docks or wharves and also on the steamers employed from time to time on the said Ferry.

9. Modification of Tariff.—The Governor in Council shall be at liberty to alter and modify the tariff of charges and tolls hereinbefore contained, should it be deemed expedient in the public interest, and after notification to the Licensee, he or his employees shall not take or receive any other or larger fares or tolls than those which shall be imposed in such modified tariff during the subsistence thereof.

119 10. Failure to Carry Out Regulations.—The Governor in Council shall be at liberty, at any time at which it may be shown, that the Licensee has failed to perform, fulfill, and keep any or other of the said provisos restrictions and conditions hereinbefore contained and expressed, to declare the License forfeited and void, whereupon the same shall become and be void to all intents and purposes as if the same had never been granted, without indemnification to the Licensee.

LL. Observance of U. S. Laws.—The said Licensee shall not at any time during the existence of the License, wilfully and knowingly infringe any of the Laws or by-laws or of the regulations of the United States of America, or of the State of Michigan, or of the

town of Sault Ste. Marie, U. S. A. in reference to ferriage which may be applicable to the said Ferry or such portion thereof as may be within the jurisdiction of any of them, United States of America, State of Michigan and the town of Sault Ste. Marie, or permit or suffer the same to be infringed by any officer servant or employee of the said Licensee.

12. Provisions Against Indemnity.—Provided always that if the United States of America, or the State of Michigan or the town of Sault Ste. Marie, U. S. shall in the exercise of any authority in any of them existing at any time during the existence of the said License, prevent or hinder ferriage, at or upon the said ferry, or such portion thereof as may be within the jurisdiction of such one of them or put the Licensee to any loss, expense, charge or damage in respect to the same, no claim or demand for compensation or any right or title thereto shall be made upon or against the Dominion of Canada.

120 13. When Boats Shall Be Placed on Route.—The ferry boat shall be placed on the route immediately on the opening of Navigation in the spring of 1906.

14. Term of License.—The license will be granted for a period of ten (10) years, from the 1st of May 1906. The Licensee will be required to give two sureties satisfactory to the Department of inland Revenue, who shall be bound jointly and severally with the principal in the sum of Five thousand (\$5,000) dollars for the full compliance of the said Licensee with the terms of the License.

In the Above Provisos and Conditions The term "License" shall extend to and include the successors and assigns of the Licensee.

This License shall not be assigned or sub-let without the consent of the Governor in Council.

In Testimony Whereof We have caused these our letters to be made patent and the Great Seal of Canada to be hereunto affixed.

Witness: Charles Jerome Jones, Esquire, a Companion of our Imperial Service Order and Deputy of Our Right Trusty and Right Well Beloved Cousin, The Right Honourable Sir Albert Henry George, Earl Grey, Viscount Howick, Baron Grey of Howick, in the County of Northumberland, in the Peerage of the United Kingdom and a Baronet: Knight Grand Cross of Our Most distinguished Order of Saint Michael and Saint George etc., etc., Governor General of Canada.

At Our Government House in Our City of Ottawa, this Twenty seventh day of April in the Year of our Lord, One thousand
121 nine hundred and six, and in the Sixth Year of Our Reign.

By command:

(Sgd.)

P. PELLETIER,

Acting Under Secretary of State.

Certified to be a true copy of the Copy of the License on file in the Dept. of Inland Revenue granted to the International Transit Company of Sault Ste. Marie to ply a ferry across the River St.

Mary between Sault Ste. Marie Algoma Ont. & Sault Ste. Marie Michigan, U. S. A. Six pages.

[SEAL.]

WM. HIMSWORTH,

Secretary Inland Revenue Department.

Inland Revenue Dept. Oct. 26th, 1911.
Oct. 26th 1911.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 9. Filed Jan. 31 1912, Chas. L. Fitch, Deputy Clerk.

122 L. S.

O. Mowat.

CANADA.

Province of Ontario:

Edward the Seventh, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to all to whom these presents shall come, Greeting:

R. Harcourt, Attorney General.

R. S. O., Cap. 14, Sec. 3.

Whereas The Ontario Companies' Act enacts that the Lieutenant-Governor of Our Province of Ontario-in-Council may from time to time direct the issue of Supplementary Letters Patent to a Company embracing any or all of the matters in the said Act provided and extending the powers of the Company to any objects within the scope of the said Act which the Company may desire.

And Whereas by its petition in that behalf The International Transit Company has prayed our Lieutenant-Governor-in-Council to issue Supplementary Letters Patent for the purpose of extending its powers

And Whereas it has been made to appear to the satisfaction of Our Lieutenant-Governor-in-Council that the Company has complied with the conditions precedent to the grant of the desired Supplementary Letters Patent.

Now Therefore Know Ye that by and with the advice of the Executive Council of Our Province of Ontario and under the authority of the hereinbefore in part recited Statute and of any other power or authority whatsoever in Us vested in this behalf We Do By These Our Royal Supplementary Letters Patent extend the powers of The International Transit Company so as to enable the Company

123 (a) To acquire, construct own maintain charter and navigate steam and other vessels:

(b) From time to time to subscribe for, take, hold, or purchase the shares, stock, bonds and debentures, or other securities of any Company having objects wholly, or in part, similar to those of the said Company, or having for its objects, or any of its objects, the

promotion of any of the objects, which the said Company is authorized to carry out, or any object ancillary thereto, or connected therewith or without security any company having objects wholly or in part similar to those of the said Company or having for its objects or any of its objects the promotion of any of the objects which the said Company is authorized to carry out or any object ancillary thereto or connected therewith and

(c) To aid by guarantee, endorsement, advances or otherwise with or without security any company having objects wholly or in part similar to those of the said Company or having for its objects or any of its objects the promotion of any of the objects which the said Company is authorized to carry out or any object ancillary thereto or connected therewith and

(d) To hold its meetings without the Province of Ontario.

In Testimony whereof We have caused these Our Letters to be made Patent and the Great Seal of our Province of Ontario to be hereunto affixed:

Witness: The Honorable Sir Oliver Mowat Knight of Grand Cross of our most distinguished Order of Saint Michael and Saint George, Member of our Privy Council for Canada, and Lieutenant-Governor of our Province of Ontario, at our Government House in our City of Toronto in our said Province this twelfth day of August in the year of our Lord one thousand nine hundred and two and in the second year of our Reign.

By Command,

J. R. STRATTON,
Provincial Secretary.

124 Endorsed: Supplementary Letters Patent, Under the Ontario Companies' Act extending the powers of The International Transit Company. Recorded this 15th day of August A. D. 1902, as Number 22 in Liber 5. John F. C. Ussher, Deputy Provincial Registrar.

PROVINCIAL REGISTRAR'S OFFICE,
TORONTO, 26th October, 1911.

I hereby certify the within to be a true and faithful copy of the Record of the Original Letters Patent as entered in Liber 5 as Number 22.

JOHN F. C. USSHER,
Deputy Registrar of the Province of Ontario.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl'ts Exhibit No. 10. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

CANADA,

Province of Ontario:

J. M. Gibson, Attorney General.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c., &c., &c., to all to whom these Presents shall come, Greeting:

Whereas The Ontario Companies' Act provides that with the exceptions therein mentioned the Lieutenant-Governor of Our Province of Ontario in Council may by letters Patent under the Great Seal create and constitute bodies corporate and politic for any of the purposes or objects to which the legislative authority of the Legislature of Ontario extends

And Whereas by their Patents in that behalf the persons herein mentioned have prayed for a Charter constituting them a body corporate and politic for the due carrying out of the undertaking hereinafter set forth.

And Whereas it has been made to appear to the satisfaction of our Lieutenant-Governor in Council that the said persons have complied with the conditions precedent to the grant of the desired Charter and that the said undertaking is within the scope of the said Act Now Therefore Know Ye that by and with advice of the executive Council of Our Province of Ontario and under the authority of the hereinbefore in part recited Statute and of any other power or authority whatsoever in Us vested in this behalf We Do By These Our Royal Letters Patent Create and Constitute the Persons hereinafter named that is to say:—

Francis Hector Clergue and Bertrand Joseph Clergue, Manufacturers; and Henry Coulthard Hamilton Andrew Elliot and John Ewart, Irving, Barristers-at-Law, all of the Town of Sault Sainte Marie, in the District of Algoma, and Province of Ontario, and any others who have become subscribers to the Memorandum of

126 Agreement of the Company and their successors, respectively a Corporation for the purposes and objects following, that is to say: Subject to the provisions of The Street Railway Act to construct equip maintain and operate a line of street railways in the said Town of Sault Sainte Marie and in any adjoining municipality or municipalities and in any unorganized territory, immediately adjoining the said Town or such municipality and upon any bridge crossing the Sainte Mary River.

The Corporate Name of the Company to be The International Transit Company, Limited; The Share Capital of the Company to be Two hundred thousand Dollars, divided into two thousand Shares of One hundred dollars each;

The Head Office of the Company to be at the said Town of Sault Sainte Marie, and

The Provisional Directors of the Company to be Francis Hector Clergue, Bertrand Joseph Clergue, Henry Coulthard Hamilton, Andrew Elliott and John Edward Irving, hereinbefore mentioned.

In Testimony Whereof We have caused these Our Letters to be made Patent and the Great Seal of Our Province of Ontario to be hereto affixed:

Witness: The Honourable Sir Oliver Mowat, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Member of Our Privy Council for Canada and Lieutenant-Governor of Our Province of Ontario, at Our Government House in Our City of Toronto in our said Province this eighteenth day of March in the year of our Lord one thousand nine hundred and one and in the First year of Our Reign.

By Command,

J. R. STRATTON,
Provincial Secretary.

127 Endorsed: Letters Patent. Under the Ontario Companies' Act Incorporating The International Transit Company, Limited. Recorded this 25th day of March A. D. 1901, as Number 58, John F. C. Ussher, Deputy Provincial Registrar.

PROVINCIAL REGISTRAR'S OFFICE,
TORONTO, Oct. 26th, 1911.

I hereby certify the within to be a true and faithful copy of the Record of the Original Letters Patent as entered in Liber 61 as Number 58.

JOHN F. C. USSHER,
Deputy Registrar of the Province of Ontario.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 11. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

128 *International Transit.*

Treaty Series No. 548.

Treaty Between the United States and Great Britain.

Boundary Waters Between the United States and Canada.

Signed at Washington, January 11, 1909,
Ratification Advised by the Senate, March 3, 1909,
Ratified by the President April 1, 1910,
Ratified by Great Britain, March 31, 1910,
Ratification Exchanged at Washington, May 5, 1910,
Proclaimed, May 13, 1910.

Washington.
Government Printing Office.
1911.

129 By the President of the United States of America.

A Proclamation.

Whereas a Treaty between the United States of America and His Majesty the King of the United Kingdom of Great Britain and

Ireland and of the British Dominions beyond the Seas, Emperor of India, to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, was concluded and signed by their respective Plenipotentiaries at Washington on the eleventh day of January, one thousand nine hundred and nine, the original of which Treaty is word for word as follows:

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being equally desirous to prevent disputes regarding the use of boundary waters and to settle all questions which are now pending between the United States and the Dominion of Canada involving the rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise, have resolved to conclude a treaty in furtherance of these ends, and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America, Elihu Root, Secretary of State of the United States; and

His Britannic Majesty, the Right Honorable James Bryce, 130 O. M., his Ambassador Extraordinary and Plenipotentiary at Washington:

Who, after having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

Preliminary Article.

For the purposes of this treaty boundary waters are defined as the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portions thereof, along which the international boundary between the United States and the Dominion of Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary.

Article I.

The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and apply-

ing equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries.

It is further agreed that so long as this treaty shall remain in force, this same right of navigation shall extend to the waters of Lake Michigan and to all canals connecting boundary waters, and now existing or which may hereafter be constructed on either side of the line. Either of the High Contracting Parties may adopt rules and regulations governing the use of such canals within its own territory and may charge tolls for the use thereof, but all
 131 such rules and regulations and all tolls charged shall apply alike to the subjects or citizens of the High Contracting Parties and the ships, vessels, and boats of both of the High Contracting Parties, and they shall be placed on terms of equality in the use thereof.

Article II.

Each of the High Contracting Parties reserves to itself or to the several State Governments on the one side and the Dominion or Provincial Governments on the other as the case may be, subject to any treaty provisions now existing with respect thereto, the exclusive jurisdiction and control over the use and diversion, whether temporary or permanent, of all waters on its own side of the line which in their natural channels would flow across the boundary or into boundary waters; but it is agreed that any interference with or diversion from their natural channel of such waters on either side of the boundary, resulting in any injury on the other side of the boundary, shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion or interference occurs; but this provision shall not apply to cases already existing or to cases expressly covered by special agreement between the parties hereto.

It is understood, however, that neither of the High Contracting Parties intends by the foregoing provision to surrender any right which it may have, to object to any interference with or diversions of waters on the other side of the boundary the effect of which would be productive of material injury to the navigation interests on its own side of the boundary.

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Article III.

It is agreed that, in addition to the uses, obstructions, and diversions heretofore permitted or hereafter provided for by special agreement between the Parties hereto, no further or other uses or obstructions or diversions, whether temporary or permanent, of boundary waters on either side of the line, affecting the natural level or flow of boundary waters on the other side of the line, shall be made except by authority of the United States or the Dominion of Canada within their respective jurisdictions and with the approval, as hereinafter provided, of a joint commission, to be known as the International Joint Commission.

The foregoing provisions are not intended to limit or interfere with the existing rights of the Government of the United States on

the one side and the Government of the Dominion of Canada on the other, to undertake to carry on governmental works in boundary waters for the deepening of channels, the construction of breakwaters, the improvement of harbors, and other governmental works for the benefit of commerce and navigation, provided that such works are wholly on its own side of the line and do not materially affect the level or flow of the boundary waters on the other, nor have such provisions intended to interfere with the ordinary use of such waters for domestic and sanitary purposes.

Article IV.

The High Contracting Parties agree that, except in cases provided for by special agreement between them, they will not permit the construction or maintenance on their respective sides of the

133 boundary of any remedial or protective works or any dams or other obstructions in waters flowing from boundary waters or in waters at a lower level than the boundary in rivers flowing across the boundary, the effect of which is to raise the natural level of waters on the other side of the boundary unless the construction or maintenance thereof is approved by the aforesaid International Joint Commission.

It is further agreed that the waters herein defined as boundary waters and waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other.

Article V.

The High Contracting Parties agree that it is expedient to limit the diversion of waters from the Niagara River so that the level of Lake Erie and the flow of the stream shall not be appreciably affected. It is the desire of both Parties to accomplish this object with the least possible injury to investments which have already been made in the construction of power plants on the United States side of the river under grants of authority from the State of New York, and on the Canadian side of the river under licenses authorized by the Dominion of Canada and the Province of Ontario.

So long as this treaty shall remain in force, no diversion of the waters of the Niagara River above the Falls from the natural course and stream thereof shall be permitted except for the purposes and to the extent hereinafter provided.

The United States may authorize and permit the diversion within the State of New York of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a
134 daily diversion at the rate of twenty thousand cubic feet of water per second.

The United Kingdom, by the Dominion of Canada, or the Province of Ontario, may authorize and permit the diversion within the Province of Ontario of the waters of said river above the Falls of Niagara, for power purposes, not exceeding in the aggregate a daily diversion at the rate of thirty-six thousand cubic feet of water per second.

The prohibitions of this article shall not apply to the diversion of water for sanitary or domestic purposes, or for the service of canals for the purposes of navigation.

Article VI.

The High Contracting Parties agree that the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the waters thereof shall be apportioned equally between the two countries, but in making such equal apportionment more than half may be taken from one river and less than half from the other by either country so as to afford a more beneficial use to each. It is further agreed that in the division of such waters during the irrigation season, between the 1st of April and 31st of October, inclusive, annually, the United States is entitled to a prior appropriation of 500 cubic feet per second of the waters of the Milk River, or so much of such amount as constitutes three-fourths of its natural flow, and that Canada is entitled to a prior appropriation of 500 cubic feet per second of the flow of St. Mary River, or so much of such amount as constitutes three-fourths of its natural flow.

The channel of the Milk River in Canada may be used at 135 the convenience of the United States for the conveyance, while passing through Canadian territory, of waters diverted from the St. Mary River. The provisions of Article II of this treaty shall apply to any injury resulting to property in Canada from the conveyance of such waters through the Milk River.

The measurement and apportionment of the water to be used by each country shall from time to time be made jointly by the properly constituted reclamation officers of the United States and the properly constituted irrigation officers of His Majesty under the direction of the International Joint Commission.

Article VII.

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

Article VIII.

This International Joint Commission shall have jurisdiction over and shall pass upon all cases involving the use or obstruction or diversion of the waters with respect to which under Articles III and IV of this treaty the approval of this Commission is required, and in passing upon such cases the Commission shall be governed by the following rules or principles which are adopted by the High Contracting Parties for this purpose:

The High Contracting Parties shall have, each on its own side of the boundary, equal and similar rights in the use of the waters hereinbefore defined as boundary waters.

136 The following order of precedence shall be observed among the various uses enumerated hereinafter for these waters, and no use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation, including the service of canals for the purposes of navigation;

(3) Uses for power and for irrigation purposes.

The foregoing provisions shall not apply to or disturb any existing uses of boundary waters on either side of the boundary.

The requirement for an equal division may in the discretion of the Commission be suspended in cases of temporary diversions along boundary waters at points where such equal division can not be made advantageously on account of local conditions, and where such diversion does not diminish elsewhere the amount available for use on the other side.

The Commission in its discretion may make its approval in any case conditional upon the construction of remedial or protective works to compensate so far as possible for the particular use or diversion proposed, and in such cases may require that suitable and adequate provision, approved by the Commission, be made for the protection and indemnity against injury of any interests on either side of the boundary.

In cases involving the elevation of the natural level of waters on either side of the line as a result of the construction or maintenance on the other side of remedial or protective works or dams or other obstructions in boundary waters or in waters flowing therefrom
137 or in waters below the boundary in rivers flowing across the boundary, the Commission shall require, as a condition of its approval thereof, that suitable and adequate provision, approved by it, be made for the protection and indemnity of all interests on the other side of the line which may be injured thereby.

The majority of the Commissioners shall have power to render a decision. In case the Commission is evenly divided upon any question or matter presented to it for decision, separate reports shall be made by the Commissioners on each side to their own Government. The High Contracting Parties shall thereupon endeavor to agree upon an adjustment of the question or matter of difference, and if an agreement is reached between them, it shall be reduced to writing in the form of a protocol, and shall be communicated to the Commissioners, who shall take such further proceedings as may be necessary to carry out such agreement.

Article IX.

The High Contracting Parties further agree that any other questions or matters of difference arising between them involving the rights, obligations, or interests of either in relation to the other or to

the inhabitants of the other, along the common frontier between the United States and the Dominion of Canada, shall be referred from time to time to the International Joint Commission for examination and report, whenever either the Government of the United States or the Government of the Dominion of Canada shall request that such questions or matters of difference be so referred.

The International Joint Commission is authorized in each case so referred to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

Such reports of the Commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or the law, and shall in no way have the character of an arbitral award.

The Commission shall make a joint report to both Governments in all cases in which all or a majority of the Commissioners agree, and in case of disagreement the minority may make a joint report to both Governments, or separate reports to their respective Governments.

In case the Commission is evenly divided upon any question or matter referred to it for report, separate reports shall be made by the Commissioners on each side to their own Government.

Article X.

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or the Dominion of Canada either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the

Senate, and on the part of His Majesty's Government with the consent of the Governor General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular questions and matters referred, together with such conclusions and recommendation as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an umpire chosen in accordance with the procedure pre-

scribed in the fourth, fifth, and sixth paragraphs of Article XLV of The Hague Convention for the pacific settlement of international disputes, dated October 18, 1907. Such umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

Article XI.

A duplicate original of all decisions rendered and joint reports made by the Commission shall be transmitted to and filed with the Secretary of State of the United States and the Governor General of the Dominion of Canada, and to them shall be addressed all communications of the Commission.

140 Article XII.

The International Joint Commission shall meet and organize at Washington promptly after the members thereof are appointed, and when organized the Commission may fix such times and places for its meetings as may be necessary, subject at all times to special call or direction by the two Governments. Each Commissioner, upon the first joint meeting of the Commission after his appointment, shall, before proceeding with the work of the Commission, make and subscribe a solemn declaration in writing that he will faithfully and impartially perform the duties imposed upon him under this treaty, and such declaration shall be entered on the records of the proceedings of the Commission.

The United States and Canadian sections of the Commission may each appoint a secretary, and these shall act as joint secretaries of the Commission at its joint sessions, and the Commission may employ engineers and clerical assistants from time to time as it may deem advisable. The salaries and personal expense of the Commission and of the secretaries shall be paid by their respective Governments, and all reasonable and necessary joint expense of the Commission, incurred by it, shall be paid in equal moieties by the High Contracting Parties.

The Commission shall have power to administer oaths to witnesses, and to take evidence on oath whenever deemed necessary in any proceeding, or inquiry, or matter within its jurisdiction under this treaty, and all parties interested therein shall be given convenient opportunity to be heard, and the High Contracting Parties agree to

141 adopt such legislation as may be appropriate and necessary to give the Commission the powers above mentioned on each side of the boundary, and to provide for the issue of subpoenas and for compelling the attendance of witnesses in proceedings before the Commission. The Commission may adopt such rules of procedure as shall be in accordance with justice and equity, and may make such examination in person and through agents or employees as may be deemed advisable.

Article XIII.

In all cases where special agreements between the High Contracting Parties hereto are referred to in the foregoing articles, such

agreements are understood and intended to include not only direct agreements between the High Contracting Parties, but also any mutual agreement between the United States and Dominion of Canada expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of the Dominion.

Article XIV.

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty. The ratifications shall be exchanged at Washington as soon as possible and the treaty shall take effect on the date of the exchange of its ratifications. It shall remain in force for five years, dating from the day of exchange of ratifications, and thereafter until terminated by twelve months' written notice given by either High Contracting Party to the other.

In faith whereof the respective plenipotentiaries have signed this treaty in duplicate and have hereunto affixed their seals.

Done at Washington the 11th day of January, in the year of our Lord one thousand nine hundred and nine.

ELIHU ROOT. [SEAL.]
JAMES BRYCE. [SEAL.]

142 And Whereas the Senate of the United States by their resolution of March 3, 1909, (two-thirds of the Senators present concurring therein) did advise and consent to the ratification of the said Treaty with the following understanding, to wit:

"Resolved further, as a part of this ratification, That the United States approves this treaty with the understanding that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's River, within its own territory, and further, that nothing in this treaty shall be construed to interfere with the drainage of wet swamp and overflowed lands into streams flowing into boundary waters, and that this interpretation will be mentioned in the ratification of this treaty as conveying the true meaning of the treaty, and will, in effect, form part of the treaty."

And whereas the said understanding has been accepted by the Government of Great Britain, and the ratifications of the two Governments of the said treaty were exchanged in the city of Washington, on the 5th day of May, one thousand nine hundred and ten;

Now, therefore, be it known that I, William Howard Taft, President of the United States of America, have caused the said treaty and the understanding, as forming a part thereof, to be made

143 public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this thirteenth day of May in the year of our Lord one thousand nine hundred and ten, and of the Independence of the United States of America the one hundred and thirty-fourth.

[SEAL.]

WM. H. TAFT.

By the President:

P. C. KNOX,

Secretary of State.

Protocol of Exchange.

On proceeding to the exchange of the ratifications of the treaty signed at Washington on January 11, 1909, between the United States and Great Britain, relating to boundary waters and questions arising along the boundary between the United States and the Dominion of Canada, the undersigned plenipotentiaries, duly authorized thereto by their respective Governments, hereby declare that nothing in this treaty shall be construed as affecting, or changing, any existing territorial or riparian rights in the water, or rights of the owners of lands under water, on either side of the international boundary at the rapids of the St. Mary's River at Sault Ste. Marie, in the use of the waters flowing over such lands, subject to the requirements of navigation in boundary waters and of navigation canals, and without prejudice to the existing right of the United States and Canada, each to use the waters of the St. Mary's

144 River, within its own territory; and further, that nothing in this treaty shall be construed to interfere with the drainage of wet, swamp, and overflowed lands into streams flowing into boundary waters, and also that this declaration shall be deemed to have equal force and effect as the treaty itself and to form an integral part thereto.

The exchange of ratifications then took place in the usual form.

In Witness whereof, they have signed the present Protocol of Exchange and have affixed their seals thereto.

Done at Washington this 5th day of May, one thousand nine hundred and ten.

PHILANDER C. KNOX. [SEAL.]

JAMES BRYCE. [SEAL.]

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. Compl't's Exhibit No. 12. Filed Jan. 31, 1912, Chas. L. Fitch, Deputy Clerk.

145 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.
CITY OF SAULT STE. MARIE et al., Defendants.

Before the Hon. Clarence W. Sessions, District Judge, January 31, 1912.

LUMB, LIONEL, SWORN:

By Mr. BODMAN:

Where do you reside?

Sault Ste. Marie, Ontario.

Are you connected with the Complainant in this case, the International Transit Company?

I am, as Comptroller.

Are the comptroller's duties similar to the duties of an auditor?

Practically the same.

Are the transactions of the company, in the way of freight shipments passing over the ferry boats of your company under your observation?

They are.

You get the reports, do you, of the number of shipments of freight?

Yes, sir.

Between the two cities?

I do.

Have you prepared a computation to show the number of shipments of freight between Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario, and between Sault Ste. Marie, Ontario, and

146 Sault Ste. Marie, Michigan, covering periods for 1910 and 1911?—I refer to merchandise shipped on the bills of lading of the Transit Company?

I have had one prepared.

Paper produced and marked for identification "Lumb Exhibit No. 1."

I show you paper marked for identification "Lumb Exhibit No. 1"; will you state what that is?

It is a statement for two years 1910 and 1911, ending December 31, 1911, giving the number of shipments of freight, and the weight in pounds of such freight which has been handled over the ferry of the International Transit Company between Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario, and vice versa.

Is that a correct statement, prepared from the books of the company?

It is so.

This does not distinguish between merchandise shipped on bills of lading which is accompanied by the owner or caretaker and that which is not thus accompanied.

Ans. No.

What is the fact, Mr. Lumb, as to whether more shipments of merchandise between these two cities over the line of your company on bills of lading where the property is not accompanied by the owner or a caretaker—whether there are more shipments of that sort where the property is accompanied—

Mr. McDONALD: We wish to object to that, inasmuch as it is stipulated as to the percentage.

There is a stipulation that will obviate the answer to that question, but I will ask this question: What is the fact as to whether there is more or less merchandise shipped on bills of lading—shipped between these two cities in the way of tonnage accompanied by the owner or caretaker than unaccompanied by the owner or caretaker?

In the absence of any actual record—we do not keep any distinct record, but from observation and the knowledge we
147 have gained by talking with the agents occasionally, the tonnage unaccompanied by the owner and the tonnage—

Mr. McDONALD: I move that that be stricken out. It refers to the stipulation which shows the percentage of receipts in cash and the cash receipts are based on tonnage.

The COURT: I do not understand that objection is to be passed upon now.

Mr. McDONALD: I object on the further ground that it is a mere opinion of the witness.

Are you stating this from your own observation of the shipments as to whether they are or are not accompanied by the owner?

I base it not upon my own personal observation but from my conferences with my clerks who are capable of giving such opinions on such matters.

Mr. McDONALD: Your knowledge comes not from your own observations but from reports of those who are under you?

Precisely.

Is it based to any extent upon your own observation?

No.

Merely from reports?

Yes, sir.

Mr. McDONALD: I ask that it be stricken out, as *hearsay*.

The deposition of Ransom shows that in issuing bills of lading and obtaining releases on bills of lading, in some of the forms, you have taken the name Algoma Central & — Railway Company, and the custom is to rule out that name and insert the name of the complainant in it, are you familiar with that fact?

I am.

148 What is the relationship between the Algoma Central and Hudson Bay Railway Company and the complainant in this suit?

They are both subsidiary companies of the Lake Superior corporation, controlled by the same financial interests, and the officers are the same, the general officers.

Mr. Bodman offered in evidence statement marked "Lumb Exhibit No. 1."

Mr. McDonald objected upon the ground that under the testimony of the witness the exhibit is not based on his own knowledge, and for that reason it is immaterial.

Mr. McDONALD: This computation that you have made does not purport to show the amount of tonnage or the number of shipments during the years specified from the Michigan Sault to the Canadian Sault, does it?

WITNESS: To Distinguish?

COUNSEL: Yes.

Ans. No.

You have no means of knowing that, from looking at this exhibit?

None whatever.

You have no personal knowledge yourself of any shipments during those two years where the same was unaccompanied by the owner?—that is, personal knowledge?

I have a personal knowledge of two.

Personal knowledge of two; in which year?—1910 or 1911?

I should say they were both in 1911.

You have no personal knowledge of any shipment in the year 1910, from the Michigan Sault to the Canadian Sault?

No, I have not.

(S'd)

LIONEL LUMB.

149 Endorsed: No. 228. The District Court of the United States, for the Western District of Michigan, Northern Division. In Equity. International Transit Co. vs. City of Sault Ste. Marie, et al. Deposition of Lionel Lumb. Filed Feb. 8, 1912. Chas. L. Fitch, Deputy Clerk.

150 In the District Court of the United States for the Western District of Michigan, Northern Division.

In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

VS.

CITY OF SAULT STE. MARIE. ANDREW J. SHORT, Mayor; ANDREW J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

The complainant is a corporation organized under the laws of the Province of Ontario, Dominion of Canada, and licensed by the Dominion Government to operate a ferry called "Kings Ferry" across St. Mary's River between Sault Ste. Marie, Ontario, and Sault Ste. Marie, Michigan. St. Mary's River is navigable for large boats and vessels and is a part of the boundary waters between the United States and Canada. Complainant owns and operates two steam vessels of Canadian register in its business of ferrying passen-

gers and property across St. Mary's River between the two cities. It owns and uses a private wharf in the City of Sault Ste. Marie, Ontario, and leases and uses a private wharf or dock in the City of Sault Ste. Marie, Michigan, and does not make use of any dock, wharf or property of any kind belonging to the city. It maintains and has an office and warehouse upon the leased dock where all fares and tolls are paid and received, none being paid or collected upon the boats. Complainant's license from the Dominion Government specifies the seasons during which the ferry shall be
151 operated, the frequency of service to be given and the hours at which boats shall be run, fixes a schedule of rates to be charged and for the several classes of transportation, passengers, vehicles, and freight, prohibits the taking or receiving of any other or larger fares or tolls than those so imposed, and declares that by any failure to comply with its terms the right to operate the ferry shall be forfeited.

The defendant, the City of Sault Ste. Marie, is a municipal corporation organized under the laws of the State of Michigan, and, by its charter granted by the state legislature, has the right, power and authority:—

"To establish or authorize, license and regulate, ferries to and from the city or any place therein, or from one part of the city to another, and to regulate and prescribe, from time to time, the charges and prices for the transportation of persons and property thereon."

Section 191 of the Legislative Act constituting the city charter also provides as follows:

"The council may regulate and license ferries from the city or any place or landing therein to the opposite shore, or from one part of the city to another, and may require the payment of such reasonable sum for such license as the council shall deem proper; and may impose such reasonable terms and restrictions in relation to the keeping and management of such ferries, and the time, manner and rates of carriage and transportation of persons and property as may be proper; and provide for the revocation of any such license, and for the punishment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries and regulating those established and licensed."

Pursuant to the authority thus conferred, the council of the defendant city has adopted an ordinance entitled: "An ordinance to license and regulate ferries." Sections 1, 2 and
152 3 of such ordinance are as follows:

SECTION 1. No person, persons, or company shall operate a ferry boat, or engage in the business of carrying or transporting persons or property thereon from the city of Sault Ste. Marie, Michigan, and across the St. Mary's River to the opposite shore, without first obtaining a license therefor from the Mayor and by otherwise complying with the provisions of this ordinance.

SECTION 2. The Mayor of said City is hereby empowered and authorized to issue and grant a license, as herein provided, to any person, persons, or company to keep, maintain, and operate a ferry or ferries, for the carrying and transporting of persons and property

from the City of Sault Ste. Marie, Michigan, across the St. Mary's River to the opposite shore, on his, or their paying into the City Treasury the sum of Fifty (\$50) dollars annually for each boat so engaged in the carrying and transportation of persons and property, and for each launch, sail boat or row boat used and operated as a ferry from said City to the opposite shore, the sum of five (\$5) dollars annually.

SECTION 3. Before any license shall be issued or granted by the Mayor as provided in section two (2) of this ordinance, the person, persons or company desiring the same, shall make application therefor to the Mayor in writing, which application shall state the name or names of the boat or boats to be operated as a ferry or ferries, the place or places for receiving and landing persons and property by said ferry or ferries within said City, and which application shall also be signed by the person or persons desiring the license;

153 and when said application is made by a company or corporation, said application shall be signed by the duly authorized officers of such company or corporation. Said application shall also contain a true and correct schedule of the rates of ferriage of persons and property proposed to be charged by the applicant within the territory prescribed by section two (2) of this Ordinance. And no license shall be issued or granted hereunder unless the application therefor shall conform to the provisions of this Ordinance. And any licensee, to whom a license shall have been issued under this Ordinance, who shall fail or refuse to conduct his or their business of ferrying under said license in accordance with the terms, provisions and conditions contained in the application therefor, or contrary to the provisions of this Ordinance, shall be deemed to have forfeited his or their rights to operate said ferry or ferries, and shall subject the offender to the same penalties herein provided for operating a ferry or ferries contrary to this Ordinance without a license therefor."

Other sections of the ordinance specify, as minutely as the Canadian license, the season, frequency and hours of service and rates to be charged for the several classes of transportation. In all these particulars the rules specified by the ordinance are different from those prescribed by the Canadian license. The ordinance also provides that for failure to comply with any of its terms, the right to operate the ferry shall be forfeited and the company and its employees shall be subject to criminal prosecution.

Article 1 of the treaty between the United States and Great Britain relating to boundary waters between the United States and Canada contains this provision:—

154 "The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels, and boats of both countries equally, subject, however, to any laws and regulations of either country, within its own territory, not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels, and boats of both countries."

The defendants seek to enforce the ordinance above mentioned by prosecution of the complainant's employees for failure to comply with it and complainant brings this suit to restrain such enforcement.

Complainant contends that, in operating its ferry and ferry boats, it is engaged in foreign commerce and that the enforcement of the city ordinance in question is a violation of the commerce clause of the Constitution of the United States which places the regulation of interstate and foreign commerce within the exclusive jurisdiction and control of Congress and is also a violation of the above quoted Article of the treaty between the United States and Great Britain. On the other hand, the defendants contend that the right to license and regulate ferries, even though they are operated upon and across boundary waters between states or between the United States and a foreign country, is one of the many powers reserved to the states and not delegated to Congress, and, therefore, that the enforcement of this ordinance is a lawful exercise of such power and is not an encroachment upon the constitutional powers of Congress, nor a violation of rights secured by treaty even though foreign commerce may thereby be incidentally affected.

In support of their respective contentions, counsel upon 155 both sides rely upon decisions of the Supreme Court of the

United States. Counsel for complainant insist that the later decisions of that court, particularly in the cases of Gloucester Ferry Co. vs. Pennsylvania, 114 U. S. 196 and Covington Bridge Co. vs. Kentucky 154 U. S. 204, have settled the present issues in its favor, while counsel for defendants are equally insistent that the later decisions have in no wise modified or overruled the earlier ones, (Gibbons vs. Ogden, 9 Wheat. 1; Fanning vs. Gregoire, 16 How. 524; Conway vs. Taylor, 1 Black, 603 and Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365.) by which they claim the questions here involved have been foreclosed in accordance with their contentions.

The difficult and delicate problem thus presented is precisely stated but not solved in St. Clair County vs. Interstate Transfer Company, 192 U. S. 454-465, where the court, after reviewing the cases above mentioned says:

"The position of the parties as to the cases which we have reviewed in this: The county (city) insists that the statement in Gibbon v. Ogden, that the establishment of ferries was within the reserved powers of the States, and the rulings in Fanning v. Gregoire, Conway v. Taylor, and Wiggins Ferry v. East St. Louis, affirmatively settle that a State may establish ferries over a navigable river, the boundary between two States, and license the same, and that doing so is not only not repugnant to the commerce clause of the constitution of the United States, but is in consonance therewith, since the power as to ferries was reserved to the States and not delegated to the national government. The Gloucester Ferry case, it is said, rested upon the nature of the particular tax imposed by the State of Pennsylvania, and that the case may hence not be considered as overruling the previous cases, not only because it did not 156 expressly refer to them, but also because some expressions found in the opinion which we have cited are construed as

substantially affirming the right of the State to regulate and license a ferry like the one here in question. On the other hand, the corporation urges that the rulings in *Fanning v. Gregoire* and *Conway v. Taylor* proceeded upon a misconception and partial view of the language of Chief Justice Marshall in *Gibbons v. Ogden*. That language, it is insisted, when the sentences are considered which immediately precede the passage quoted in *Fanning v. Gregoire* and *Conway v. Taylor*, clearly demonstrates that the Chief Justice was referring to the power of the States to license and control ferries on streams of a local character, and this, it is said, is demonstrated by the statement on the subject in the *Gloucester Ferry* case. The case of *Wiggins Ferry v. East St. Louis*, it is argued, preceded, not upon the right of the State over the ferry, but upon its power to tax property whose situs was within its jurisdiction, and this was the view adopted by the court below. The *Gloucester Ferry* case, it is urged, did not proceed upon the nature of the tax, but upon the want of power in the State of Pennsylvania to exert its control over a ferry crossing a river which was a boundary between two States, so as in effect to burthen the carrying on of interstate commerce. And that case, it is further insisted, therefore qualifies, if it does not specifically overrule, the earlier cases."

The rulings in *Gloucester Ferry Co. vs. Pennsylvania* and *Covington Bridge Co. vs. Kentucky*, when applied to the conceded facts of the present case, settle beyond controversy that the complainant is engaged exclusively in foreign commerce and that its ferry boat, wharfs, docks, offices and warehouses are all instruments of
 157 foreign commerce. But defendants insist that the power to regulate ferries, even though they are engaged in and are instruments of interstate or foreign commerce, is vested and rests in the state and its municipal corporations, and that such power to regulate includes the right to license and to require the payment of a license fee and also the right to prescribe rates and tolls for the transportation thereon of persons and property. Section one of the city ordinance under consideration provides that:—"No person, persons or company shall operate a ferry boat, or engage in the business of carrying or transporting persons or property thereon" from the Michigan City across the River to the Canadian shore "without first obtaining a license therefor from the Mayor and by otherwise complying with the provisions of this ordinance." Section two empowers and authorizes the Mayor of the City to issue and grant a license "As herein provided" upon the payment of the prescribed annual license fee. Section three provides that:—"Before any license shall be issued or granted by the Mayor as provided in Section two of this ordinance, the person, persons, or company desiring the same, shall make application therefor to the Mayor in writing * * * signed by the person or persons desiring the license, * * * Said application shall also contain a true and correct schedule of the rates of ferriage of persons and property proposed to be charged by the applicant. * * * And no license shall be issued, or granted hereunder unless the application therefor shall conform with the provisions of this ordinance." Section

six prescribes in detail the tolls and fares to be charged for the ferryage of persons and property. It thus appears that the payment of a license fee and an agreement to comply with the terms of the ordinance as to tolls and fares are both conditions precedent to the obtaining of a license and to the right to engage in a business which is foreign or international commerce. It necessarily follows, that unless the state, through its municipal agency, has the right both to exact a license fee for the privilege of engaging in international commerce and to prescribe the rates to be charged therein, this ordinance cannot be sustained. Two questions are thus presented:—

First. Has a state municipality the right and power to license a ferry operated by a foreign corporation upon and across navigable international boundary waters; and

Second. As a municipal regulation, can the state municipality prescribe and fix the rates of fare to be charged by the owner for the transportation of persons and property upon such ferry?

The first question has not been definitely answered in the adjudicated cases in the Federal Courts. The doctrine that the power to license ferries and to impose a license fee upon ferry keepers engaged in interstate commerce is a police power which can be exercised by the state and its municipal corporations "Undoubtedly finds support in the opinions announced in *Fanning vs. Gregoire* and *Conway vs. Taylor*." In *Wiggins Ferry Company vs. East St. Louis*, the court expressly declared that a state has the power "To impose a license fee either directly or through one of its municipal corporations upon the keepers of ferries living in the state for boats owned by them and used in ferrying passengers and goods from a landing in the state across a navigable river to a landing in another state." The following excerpts from the opinion in that case clearly and concisely state the rule there laid down and also its limitations:

"The levying of a tax upon vessels or other water-craft or the exaction of a license fee by the State within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the Constitution of the United States.

159 * * * The exaction of a license fee is an ordinary exercise of the police power by municipal corporations. When, therefore, a State expressly grants to an incorporated city, as in this case, the power 'to license, tax, and regulate ferries,' the latter may impose a license tax on the keepers of ferries, although their boats ply between landings lying in two different States, and the act by which this exaction is authorized will not be held to be a regulation of commerce."

The basic principle underlying this decision of the Supreme Court seems to be that a municipality has the power to tax property located within its limits or to exact a license fee from the owners thereof living within its limits for the privilege of using and employing such property in a quasi public service, and that the exercise of such power, when applied to persons engaged in and to instruments employed in interstate commerce, is not an invasion of the

exclusive power of Congress to regulate commerce conferred upon it by the Constitution. Thus construed and limited, the Wiggins Ferry Case falls far short of sustaining defendants' contention that the city of Sault Ste. Marie, by virtue of its charter powers derived from the State, has the right to exact a license fee from a citizen of a foreign country for the privilege of operating ferry boats, whose situs is in such foreign country, in the ferriage of passengers and property from a private wharf in the defendant City across an international boundary river to a landing upon the opposite shore. By reference at least, the right to exact such license fee is negatived in the following cases where the Wiggins Ferry Case is cited and construed:

Moran vs. New Orleans, 112 U. S. 69-74.

Pickard vs. Pullman Southern Car Co., 117 U. S. 34-50.

Pullman's Car Co. vs. Pennsylvania, 141 U. S. 18-23.

The second question must be answered in the negative upon the authority of Covington Bridge Company vs. Kentucky, 154 160 U. S. 204, in which it was held that the State of Kentucky had no power to fix or regulate tolls upon a bridge over a navigable stream between the States of Ohio and Kentucky. The positive language of the Supreme Court in that case, when applied to the facts in the present case, settles beyond controversy that the City of Sault Ste. Marie has no power to fix rates and charges for the transportation of persons and property upon an international ferry:

"If as was intimated in that case (Gloucester Ferry Company vs. Pennsylvania), interstate commerce means simply commerce between the States, it must apply to all commerce which crosses the state line, regardless of the distance from which it comes or to which it is bound, before or after crossing such state line—in other words, if it be commerce to send goods from Cincinnati, in Ohio, to Lexington, in Kentucky, it is equally such to send goods or to travel in person from Cincinnati to Covington; and while the reasons which influenced this court to hold in the Wabash Case that Illinois could not fix rates between Peoria and New York may not impress the mind so strongly when applied to fixing the rates of toll upon a bridge or ferry, the principle is identically the same, and, at least in the absence of mutual or reciprocal legislation between the two States, it is impossible for either to fix a tariff of charges.

With reference to the Second question, an attempt is made to distinguish a bridge from a ferry boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. * * * While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon such bridge is as much a tax upon commerce 161 as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river.

In *Conway vs. Taylor's Executors*, 1 Black, 603, a ferry franchise on the Ohio was held to be grantable under the laws of Kentucky to a citizen of that State who was a riparian owner on the Kentucky side. It was said not to be necessary to the validity of the grant that the grantee should have the right of landing on the other side or beyond the jurisdiction of the State. The opinion, however, did not pass upon the question of the right of one State to regulate the charge for ferriage, nor does it follow that because a State may authorize a ferry or bridge from its own territory to that of another State, it may regulate the charges upon such bridge or ferry. A State may undoubtedly create corporations for the purpose of building and running steamships to foreign ports, but it would hardly be claimed that an attempt to fix a scale of charges for the transportation of persons or property to and from such foreign ports would not be a regulation of commerce and beyond the constitutional power of the State. * * *

We do hold, however, that the statute of the Commonwealth of Kentucky in question in this case is an attempted regulation of commerce which it is not within the power of the State to make. As was said by Mr. Justice Miller in the *Wabash Case*: "It is impossible to see any distinction in its effects upon commerce of either class between a statute which regulates the charges for transportation and a statute which levies a tax for the benefit of the State upon the same transportation."

It is undoubtedly true that the courts of several of the states, in deliverances both before and since the decision above quoted, have held that the States possess the rights and powers claimed for them by the defendants in the case at bar. It is also true that 162 this doctrine finds slight support in certain dicta contained in some of the earlier opinions of the Supreme Court when read and considered apart from their context and when separated from the facts to which they relate. Further comment upon these decisions of the state court and these expressions of the Federal Court is made unnecessary, if not improper, by the following pertinent statement in the opinion in the *Covington Bridge Case*:

"It is true the States have assumed the right in a number of instances, since the adoption of the Constitution, to fix the rates or tolls upon interstate ferries and bridges, and perhaps in some instances have been recognized as having the authority to do so by the courts of the several states. But we are not aware of any case in this court where such right has been recognized."

Neither the State of Michigan nor its municipal corporation, the City of Sault Ste. Marie, has any power or authority to negotiate or treat with the Dominion of Canada with relation to the regulation of commerce between the two countries or the instruments of such commerce. As was said in the case of *Bowman vs. Chicago and Northwestern Ry. Co.*, 125 U. S. 465-482:

"Laws which concern the exterior relations of the United States with other nations and governments are general in their nature, and should proceed exclusively from the legislative authority of the nation. The organization of our state and Federal system of govern-

ment is such that the people of the several States can have no relations with foreign powers in respect to commerce or any other subject, except through the government of the United States and its laws and treaties. *Henderson vs. Mayor of New York*, 92 U. S. 259, 273;”

and again in *Crutcher vs. Kentucky*, 141 U. S. 47-57-58:

“It has frequently been laid down by this court that the
163 power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a state legislature could prohibit a foreign corporation,—an English or a French transportation company, for example,—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of state legislation, but within that of national legislation. *Inman Steamship Co. vs. Tinker*, 94 U. S. 238. The prerogative and responsibility and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate bodies, or foreign individuals with whom they may have relations of foreign commerce, belong to the government of the United States, and not to the government of the several states; and confidence in that regard may be reposed in the national legislature without any anxiety or apprehension arising from the fact that the subject matter is not within the province or jurisdiction of the state legislature.”

In this particular instance the regulating acts of the local and subordinate municipalities of the two nations, whether authorized or unauthorized on the part of either, are conflicting and not mutual and reciprocal. The national governments have acted directly and, in the exercise of their treaty making power, have ordained that the navigation of the waters of St. Mary's River “From main shore
to main shore” shall forever continue free and open for the

164 purpose of commerce to the inhabitants and to the ships, vessels and boats of both countries equally, subject only to such local laws and regulations as are not inconsistent with such privilege of free navigation. In these respects the present case differs from those cases involving the regulation of bridges or ferries used in interstate commerce, and the intimation contained in the opinion in some of the cases that States by mutual or reciprocal legislation may possibly regulate and fix rates and tolls upon an interstate bridge or ferry has no application and need not be considered or discussed.

Complainant is entitled to the injunction prayed for in its bill of complaint and a decree will be made accordingly. Complainant will recover its costs to be taxed against the defendant, City of Sault Ste. Marie.

Dated March 14, 1912.

(Sd.)

C. W. SESSIONS,
District Judge.

Endorsed: No. 228. The District Court of the United States For the Western District of Michigan, Northern Division. In Equity. International Transit Co. vs. City of Sault Ste. Marie, et al. Opinion. Filed Mar. 14, 1912, Chas. L. Fitch, Deputy Clerk.

165 In the District Court of the United States for the Western District of Michigan, Northern Division.

In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, ANDREW J. SHORT, Mayor; ANDREW J. EATON, Recorder, and EDGAR J. SWART, Chief of Police, Defendants.

THURSDAY, April 11, 1912.

The Court met pursuant to adjournment.

Present:

The Honorable Clarence W. Sessions, District Judge.

This cause having come on to be heard on the pleadings filed and proofs taken therein, and having been argued by counsel thereupon, and it satisfactorily appearing that the material allegations of said Bill are sustained by the proofs, and that the complainant is entitled to the relief therein prayed, upon consideration thereof, it is Ordered, Adjudged and Decreed as follows:

That the ordinance referred to in the Bill of Complaint in said cause, being Ordinance CCXXIII of the City of Sault Ste. Marie, Michigan, approved September 26th, 1911, entitled an Ordinance to License and Regulate Ferries, in so far as the same purports to apply to the operation by the said complainant of the ferry described in said Bill of Complaint, across the St. Mary's River between the Cities of Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario, is contrary to the Constitution of the United States, and to the treaty made and entered into in pursuance thereof on the 13th day of May, 1910, by and between the United States of America and the United Kingdom of Great Britain and Ireland, as
166 alleged in said Bill of Complaint, and is therefore void and of no effect as to complainant's said ferry.

That said defendants, their officers, agents, and attorneys be and they are perpetually enjoined and restrained from enforcing the provisions of said ordinance or any part thereof against the said complainant, or any of its officers, agents, servants or employees, in regard to said ferry, by instituting against said complainant or any of its officers, agents, servants or employees, any criminal proceedings or prosecutions for violation of said ordinance, or any part thereof, or by instituting any other proceeding for the enforcement of the penalties prescribed in said ordinance on account of

ment is such that the people of the several States can have no relations with foreign powers in respect to commerce or any other subject, except through the government of the United States and its laws and treaties. *Henderson vs. Mayor of New York*, 92 U. S. 259, 273; "

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In this particular instance the regulating acts of the local and subordinate municipalities of the two nations, whether authorized or unauthorized on the part of either, are conflicting and not mutual and reciprocal. The national governments have acted directly and, in the exercise of their treaty making power, have ordained that the navigation of the waters of St. Mary's River "From main shore to main shore" shall forever continue free and open for the purpose of commerce to the inhabitants and to the ships, vessels and boats of both countries equally, subject only to such local laws and regulations as are not inconsistent with such privilege of free navigation. In these respects the present case differs from those cases involving the regulation of bridges or ferries used in interstate commerce, and the intimation contained in the opinion in some of the cases that States by mutual or reciprocal legislation may possibly regulate and fix rates and tolls upon an interstate bridge or ferry has no application and need not be considered or discussed.

Complainant is entitled to the injunction prayed for in its bill of complaint and a decree will be made accordingly. Complainant will recover its costs to be taxed against the defendant, City of Sault Ste. Marie.

Dated March 14, 1912.

(Sd.)

C. W. SESSIONS,
District Judge.

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166 alleged in said Bill of Complaint, and is therefore void and of no effect as to complainant's said ferry.

That said defendants, their officers, agents, and attorneys be and they are perpetually enjoined and restrained from enforcing the provisions of said ordinance or any part thereof against the said complainant, or any of its officers, agents, servants or employees, in regard to said ferry, by instituting against said complainant or any of its officers, agents, servants or employees, any criminal proceedings or prosecutions for violation of said ordinance, or any part thereof, or by instituting any other proceeding for the enforcement of the penalties prescribed in said ordinance on account of

the operation of said ferry, or by maintaining or continuing any such proceedings not already begun.

And that said defendant City of Sault Ste. Marie pay to said complainant its costs of this suit to be taxed.

Approved for entry, Apr. 11, 1912.

(S'd)

C. W. SESSIONS,

District Judge.

Endorsed: No. 228. District Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants. Decree. Filed Apr. 11, 1912, Chas. L. Fitch, Deputy Clerk. C. 490. O. K. F. T. McDonald, Solicitor for Defendants. Boynton, McMillan, Bodman & Turner, Solicitors for Complainant, 704 Union Trust Building, Detroit, Michigan.

167 In the District Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

CITY OF SAULT STE. MARIE et al., Defendants.

It is hereby stipulated that the defendants in this cause may have sixty days from the entry of the decree herein within which to settle a Bill of Exceptions, or take such steps to perfect their appeal to the Supreme Court of the United States, and that an order to this effect may be entered upon the filing of this stipulation signed by the respective solicitors for the parties hereto.

Dated, April 9th, 1912.

(S'd)

BOYNTON, McMILLAN, BODMAN &
TURNER,

Solicitor for Complainant.

(S'd)

F. T. McDONALD,

Solicitor for Defendants.

Endorsed: No. 228. In the District Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. City of Sault Ste. Marie, et al., Defendants. Stipulation. Filed Apr. 11, 1912, Chas. L. Fitch, Deputy Clerk. F. T. McDonald, Solicitor for Defendants.

168 The District Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, ANDREW J. SHORT, Mayor; ANDREW J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

On reading and filing the stipulation of the parties to this cause, signed by their respective solicitors, it is hereby ordered that the defendants be and hereby are granted sixty days from this date within which to settle a bill of exceptions or take such other steps to perfect an appeal to the Supreme Court of the United States, as they may be advised.

Approved for entry, April 11, 1912.

(S'd)

C. W. SESSIONS,
U. S. District Judge.

Endorsed: No. 228. The District Court of the United States for the Western District of Michigan, Northern Division. The International Transit Co. vs. City of Sault Ste. Marie, et al. Order extending time. C. 491. Filed Apr. 11, 1912, Chas. L. Fitch, Deputy Clerk.

169

Appeal Bond.

Then know all men by these presents, that we The City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, Edgar J. Swart, Chief of Police, and Augustus H. Hasebrook and Bernard F. Kelly of Sault Ste. Marie as sureties are held and firmly bound unto the International Transit Company, a corporation, in the full and just sum of Five hundred (500) dollars to be paid to the said The International Transit Company, their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 1st day of May A. D. 1912.

Whereas, lately at the District Court of the United States for the Western District of Michigan, Northern Division. In Equity, on the eleventh day of April A. D. 1912 in suit depending in said court between the International Transit Company and City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, Edgar J. Swart, Chief of Police, defendants, a decree was rendered against the said defendants and said defendants having obtained an appeal to the Supreme Court of the United States and filed a copy in the Clerk's office of said court to reverse the decree in the aforesaid suit and a citation directed to the said The International Transit Company citing and admonishing him

to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington, on the sixth day of June next.

Now, the condition of the above obligation is such that if the said the City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, Edgar J. Swart, 170 Chief of Police, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

ANDREW J. SHORT.	[L. s.]
EDGAR J. SWART.	[L. s.]
ANDREW J. EATON.	[L. s.]
AUGUST H. HASEBROOK.	[L. s.]
BERNARD F. KELLY.	[L. s.]

Sealed and delivered in presence of

HERBERT W. RUNNELLS.
F. T. McDONALD.

Approved by

C. W. SESSIONS.

United States District Judge.

STATE OF MICHIGAN,

County of Chippewa, ss:

Augustus H. Hasebrook and Bernard F. Kelly of Sault Ste. Marie, Michigan, sureties on the foregoing bond being each duly sworn says that he is worth in unencumbered property subject to execution the sum of five hundred dollars (\$500.00).

AUGUST H. HASEBROOK.
BERNARD F. KELLY.

Subscribed and sworn to before me this 1st day of May A. D. 1912.

[SEAL.]

HERBERT W. RUNNELS,
Justice of the Peace, Chippewa County, Michigan.

Endorsed: No. 228. United States of America for the Western District of Michigan, Northern Division. In Equity. The International Transit Co. Complainant, vs. The City of Sault Ste. Marie, a municipal corporation, et al., Defendants. Appeal Bond. Filed May 7/12, Chas. J. Potter, Clerk. F. T. McDonald, Solicitor for defendants. John W. Shine, of Counsel.

171 UNITED STATES OF AMERICA:

The District Court for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder; Edgar J. Swart, Chief of Police, Defendants.

Petition for Appeal to the Supreme Court of the United States.

Now comes the above named defendants, and conceiving themselves aggrieved by the decision of said court, and a decree made and entered on the 11th day of April A. D. 1912, in the above entitled cause, do hereby appeal from said decision and from said decree to the Supreme Court of the United States, for the reasons specified in the Assignment of Errors which is filed herewith.

And the said defendants pray that this, their appeal, may be allowed and that a transcript of the record, proceedings, and papers upon which said decision and decree was made, duly authenticated may be sent to the Supreme Court of the United States.

F. T. McDONALD,
Solicitors for Defendants.
JOHN W. SHINE,
Of Counsel.

Dated this 15th day of April A. D. 1912.

The foregoing claim of appeal is hereby allowed.

C. W. SESSIONS,
District Judge.

172 [Endorsed:] (20.) No. 228. United States of America. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co. Complainant, vs. The City of Sault Ste. Marie a municipal corporation et al. Defendants. Petition for appeal to the Supreme Court of the United States. Filed May 7, 1912. Chas. J. Potter, Clerk. F. T. McDonald, Solicitor for Defendants. John W. Shine of Counsel.

173 UNITED STATES OF AMERICA:

The District Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT Co., Complainant,
 VS.
 THE CITY OF SAULT STE. MARIE, a Municipal Corporation, et al.,
 Defendants.

Assignment of Errors.

F. T. McDonald, Solicitor for Defendants; John W. Shine, of Counsel.

174 UNITED STATES OF AMERICA:

The District Court for the Western District of Michigan, Northern Division. In Equity.

THE INTERNATIONAL TRANSIT COMPANY, Complainant,
 VS.
 CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder; Edgar J. Swart, Chief of Police, Defendants.

Assignment of Errors.

The defendants pray an appeal from the decision and final decree of this court in said cause to the Supreme Court of the United States and assigns for error as follows:

First. That the court erred in deciding and holding as a matter of law that under the Constitution of the United States, the State of Michigan, through its municipality, the City of Sault Ste. Marie, has no power to establish and regulate ferries on the St. Marys River from the Michigan side across to the Canadian side on the opposite shore of the river, and to fix the rate of ferriage from the Michigan shore.

Second. That the said court erred in holding and deciding that the Ordinance of the City of Sault Ste. Marie number CCXXIII, entitled "An Ordinance to License and Regulate Ferries," enacted under authority of an act of the legislature of the State of Michigan, is in contravention of the Constitution of the United States and especially of the foreign commerce clause of Section 8, Article I of the Constitution of the United States.

Third. That the court erred in holding and deciding that the provisions of said Ordinance is in violation of the Treaty existing between the United States of America and The United Kingdom of Great Britain and Ireland, relative to Boundary Waters between the United States and Canada made May 13th, 175
 A. D. 1910.

Fourth. That said court erred in rendering a final decree in said cause in favor of the complainant and against the defendants as follows:

That the Ordinance referred to in the Bill of Complaint in said cause, being Ordinance CCXXIII of the City of Sault Ste. Marie, Michigan, approved September 26th, 1911, entitled, An Ordinance to License and Regulate Ferries, in so far as the same purports to apply to the operation by said complainant of the ferry described in said Bill of Complaint across the St. Marys River between the cities of Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario, is contrary to the Constitution of the United States, and to the Treaty made and entered into in pursuance thereof on the 13th day of May 1910, by and between the United States of America and The United Kingdom of Great Britain and Ireland, as alleged in said Bill of Complaint, and is therefore void and of no effect as to complainant's said ferry.

Fifth. That said court erred in rendering a final decree in favor of complainant and against said defendants as follows:

That said defendants, their officers, agents, and attorneys be and they are perpetually enjoined and restrained from enforcing the provision of said Ordinance or any part thereof against the said complainant, or any of its officers, agents, servants, or employees, in regard to said ferry, by instituting against said complainant or any of its officers, agents, servants or employees, any criminal proceedings or prosecutions for violation of said Ordinance or any part thereof, or by instituting any other proceedings for the enforcement of the penalties prescribed in said Ordinance on account of the Operation of said ferry, or by maintaining or continuing any such proceedings not already begun.

Wherefore defendants pray that the decree of said court may be reversed.

F. T. McDONALD,
Solicitor for Defendants.
JOHN W. SHINE,
Of Counsel.

Dated this 15th day of April A. D. 1912.

176 [Endorsed:] (22.) No. 228. United States of America. The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. The International Transit Co., Complainant, vs. The City of Sault Ste. Marie, a Municipal Corporation, et al., Defendants. Assignment of Errors. F. T. McDonald, Solicitor for Defendants. John W. Shine, of Counsel. Filed May 7th, 1912. Chas. J. Potter, Clerk.

177 UNITED STATES OF AMERICA:

The Supreme Court of the United States, Sixth Judicial Circuit.

THE INTERNATIONAL TRANSIT COMPANY, a Corporation, Plaintiffs
in Error,

vs.

CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J.
Short, Mayor; Andrew J. Eaton, Recorder; Edgar J. Swart,
Chief of Police, Defendants in Error.

The President of the United States of America to the International
Transit Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, on the sixth day of June next, pursuant to an order allowing an appeal filed in the Clerk's Office of the District Court of the United States for the Western District of Michigan, Northern Division, in Equity, wherein the City of Sault Ste. Marie, a municipal corporation, Andrew J. Short, Mayor, Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appellants' assignments of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this seventh day of May, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States of America the one hundred and thirty-sixth.

C. W. SESSIONS,

United States District Judge.

178 Service of a copy of the within Citation is hereby admitted
this 13th day of May, A. D. 1912.

BOYNTON, McMILLAN, BODMAN & TURNER,

Attorney- for Appellee.

HENRY E. BODMAN, *Of Counsel.*

[Endorsed:] (23.) Original. No. 228. United States of America. The Supreme Court of the United States, Sixth Judicial Circuit. The International Transit Company, a Corporation, Plaintiffs in Error, vs. The City of Sault Ste. Marie, a Municipal Corporation, et al., Defendants in Error. Citation. Proof of series. Filed May 20, 1912. Fred J. Schulteis, Dep. Clerk. F. T. McDonald, Solicitor for Defendants, John W. Shine of Counsel.

179 District Court of the United States for the Western District of Michigan, Northern Division.

TUESDAY, June 4, 1912.

The Court met pursuant to adjournment.
Present, the Honorable Clarence W. Sessions, District Judge.

INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

THE CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

Order Extending Time to Complete Transcript on Appeal.

Upon request of the Clerk, for the purpose of completing transcript on appeal to the United States Supreme Court, It is Ordered that the time for making return to the Writ of Error herein, be extended to the eleventh day of July, A. D. 1912.

180 In the District Court of the United States for the Western District of Michigan, Northern Division.

INTERNATIONAL TRANSIT COMPANY, Complainant,

vs.

THE CITY OF SAULT STE. MARIE, a Municipal Corporation; ANDREW J. Short, Mayor; Andrew J. Eaton, Recorder, and Edgar J. Swart, Chief of Police, Defendants.

Order Extending Time to Complete Transcript on Appeal.

Upon request of the Clerk, for the purpose of completing transcript on appeal to the United States Supreme Court, in the above entitled cause, It Is Ordered that the time for making return to the Citation herein, be extended to the 30th day of July, A. D. 1912.

Dated July 10, A. D. 1912.

C. W. SESSIONS,

District Judge.

[Endorsed:] The District Court of the United States for the Western District of Michigan, Northern Division. In Equity. International Transit Co. vs. City of Sault Ste. Marie et al. Order extending time for making return. Filed July 10, 1912. Chas. L. Fitch, Deputy Clerk.

181 UNITED STATES OF AMERICA,
Western District of Michigan,

Northern Division, ss:

I, Charles J. Potter, Clerk of the District Court of the United States for the Western District of Michigan, Northern Division, do

hereby certify that I have compared the annexed and foregoing with the originals thereof now on record and on file in my office; that the same are true and correct copies of certain of the files and records of orders made by said Court, except Petition for Appeal, Assignment of Errors and Citation, which are original files, and of the whole thereof.

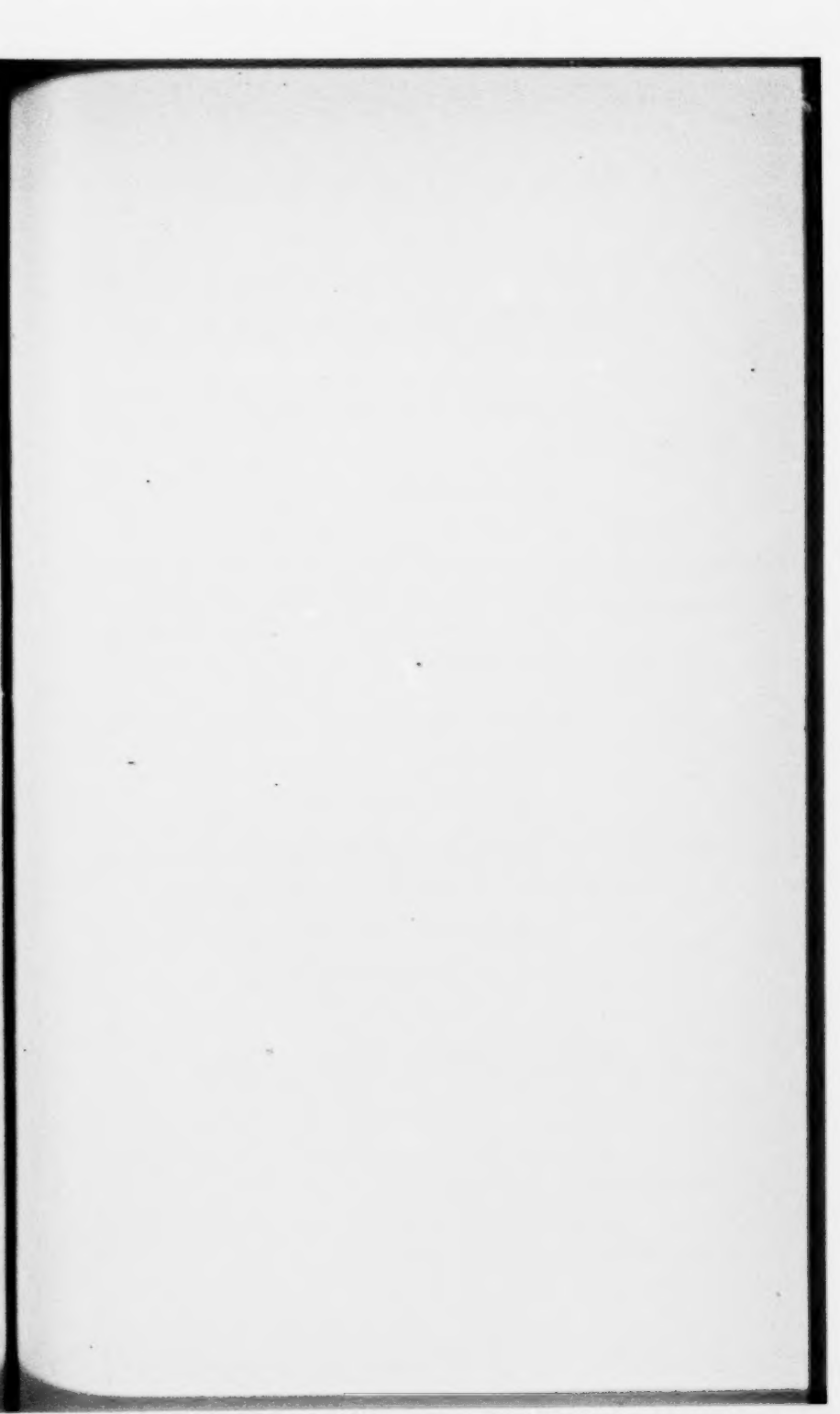
In testimony whereof I have hereunto set my hand and duly affixed the seal of said Court at the City of Marquette, in said District and Division, this 23rd day of July, in the year one thousand nine hundred and twelve.

[Seal of the U. S. District Court, Western District of Michigan, Northern Division.]

CHARLES J. POTTER, *Clerk.*

By FRED J. SCHULTHEIS, *Deputy.*

Endorsed on cover: File No. 23,324. W. Michigan D. C. U. S. Term No. 749. The City of Sault Ste. Marie, Andrew J. Short, mayor, et al., appellants, vs. International Transit Company. Filed August 5, 1912. File No. 23,324.



UNITED STATES OF AMERICA

SUPREME COURT OF THE
UNITED STATES

OCTOBER, 1912, TERM

NO. 323

THE CITY OF SAULT STE MARIE,
a Municipal Corporation,
ANDREW J. SHORT, Mayor, et al,

Appellants,

vs.

INTERNATIONAL TRANSIT COMPANY,
Appellee.

Appeal from the District Court of the United
States for the Western District of
Michigan, Northern
Division, in Equity

BRIEF FOR APPELLANTS

JOHN W. SHINE,
Attorney for Appellants.
F. T. McDONALD,
Of Counsel.

Office Supreme Court, U. S.
FILED.

MAY 19 1913

JAMES H. McKENNEY,
CLERK



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UNITED STATES OF AMERICA

**SUPREME COURT OF THE
UNITED STATES**

OCTOBER, 1912, TERM

NO. 749

THE CITY OF SAULT STE MARIE,
a Municipal Corporation,
ANDREW J. SHORT, Mayor, et al,
Appellants,

vs.

INTERNATIONAL TRANSIT COMPANY,
Appellee.

**Appeal from the District Court of the United
States for the Western District of
Michigan, Northern
Division, in Equity**

BRIEF OF APPELLANT

STATEMENT OF THE CASE.

This case arises on the right of the City of Sault Ste. Marie, a municipal corporation, of the State of Michigan,

by ordinance, to license and regulate ferries on the St. Marys River, from the Michigan shore to the Canadian shore on the opposite side of the river. The St. Marys river, at the City of Sault Ste. Marie, is about one-half of a mile wide, and is a boundary stream between the State of Michigan, one of the United States of America, on the one side, and the Dominion of Canada, on the other.

The State of Michigan was admitted into the Union in the year 1837.

The City of Sault Ste. Marie was organized under a special charter, granted by the legislature of the state, under Act. No. 533 of Local Acts for the year 1887. Among the powers conferred on the city, relative to ferries, under sub-section 14 of section one of Chapter IX, are the following

“To establish or authorized, license and regulate ferries to and from the city or any place therein, or from one part of the city to another, and to regulate and prescribe from time to time the charges and prices for the transportation of persons and property thereon.”

And by Section one of Chapter XV, under the title “Ferries,” the following authority is granted to the city:

“The council may regulate and license ferries from the city or any place or landing therein to the opposite shore, or from one part of the city to another, and may require the payment of such reasonable sum for such license as the council shall deem proper; and may impose such reasonable terms and restrictions in relation to the keeping and management of such ferries, and the time, manner and rates of carriage and transportation of persons and property as may be proper; and provide for the revocation of any such license, and for the punish-

ment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries and regulating those established and licensed." (Transcript of Record 15-49.)

In pursuance of the powers conferred by the state legislature the City of Sault Ste. Marie, by Ordinance No. 223 of the city, approved September 26, 1911, provided for licensing and regulating ferries. (Transcript of Record p. 6.)

The ordinance provides that those desiring to operate a ferry from the Michigan shore of St. Marys river to the opposite shore, shall first procure a license therefor from the mayor of the city. It fixes the rate to be charged for the ferriage of persons and for horses and vehicles with custodian or driver, and for baggage, from the Michigan shore to the opposite shore. (Transcript of Record p. 7.)

It provides for the imposition of a penalty for any violation thereof.

The appellee is a corporation of the Dominion of Canada.

One Pocock, operating a ferry boat belonging to the appellee, engaged in the ferriage of persons and property on said river St. Marys from the Michigan shore, without having procured a license so to do as provided in said ordinance, and was proceeded against for violation thereof.

This suit was brought by the appellee in the Circuit (now District) Court of the United States for the Western District of Michigan to restrain the City of Sault Ste. Marie and its officers from enforcing this ordinance on the grounds briefly stated that:

" 1st. The ordinance is void because it violates the Commerce clause of the Constitution of the United States.

“2nd. That it is in conflict with article one of the Treaty between the United States of America and the United Kingdom of Great Britain as proclaimed May 13, 1910.”

The reasonableness of the rates of ferriage, and other provisions of the ordinance are not questioned by the appellee.

The ordinance in fixing the rate of ferriage does not attempt to fix a rate from the Canadian shore to the Michigan shore, but fixes only the rate from the Michigan shore to the opposite shore.

The appellee at the time of the prosecution referred to herein, and at the time of the commencement of this suit, was engaged in the ferriage of persons and property across the St. Marys river at Sault Ste. Marie, Michigan, from the Michigan shore to the opposite shore on the Canadian side of the river, under an exclusive license granted by the Dominion of Canada, for the ferriage of persons and property across the St. Marys river between Sault Ste. Marie, in the Province of Ontario, and Sault Ste. Marie, in the State of Michigan, and in and by which license so granted the rate of ferriage is not only fixed for the carriage of persons and property from the Canadian shore to the Michigan shore, but it also fixes the rate or charge from the Michigan shore to the Canadian shore. (Transcript of Record p. 67.)

It also provides in said Canadian license that:

“The said licensee shall not at any time during the existence of the license, willfully and knowingly infringe any of the Laws or by-laws or of the regulations of the United States of America, or of the State of Michigan, or of the town of Sault Ste. Marie, U. S. A., in reference to ferriage which may

be applicable to the said Ferry or such portion thereof as may be within the jurisdiction of any of them, United States of America, State of Michigan and the town of Sault Ste. Marie, or permit or suffer the same to be infringed by any officer, servant or employe of the said Licensee." (Transcript of Record p. 67-8.)

The ferry boats of the appellee, the "Algoma" and "Bawating," which were engaged in the ferriage of persons and property across the St. Marys river, and running on regular trips, were small steam vessels constructed and equipped especially for the ferry business only, and engaged generally in the ferriage of persons, baggage and property from the City of Sault Ste. Marie, Michigan, to the opposite or Canadian shore of said river, and were not suitable nor authorized to engage in the general passenger or freight business on the Great Lakes. (Transcript of Record p. 12, 49.)

The appellee maintains on the Michigan side of the river its ferry station house, ticket office, waiting room and dock, where persons and their property are received for transportation across to the Canadian side. All fares are collected on the Michigan side at its ticket office before passengers are permitted to go on board the ferry boats. (Transcript of Record p. 13, 49.)

The maintenance and operation of appellee's ferry business is under the direction, control and management of a superintendent residing in Sault Ste. Marie, Michigan. (Transcript of Record p. 13, 49.)

That the appellees ferry dock, station, ticket office and landing is all within the corporate limits of the City of Sault Ste. Marie, Michigan. (Transcript of Record p. 13-14, 49.)

A blue print map at page 64 of the Transcript of

Record shows the location of the ferry dock and ferry office buildings on the Michigan side of the river.

At the trial below some proofs were introduced by the appellee tending to show that on some occasions a small amount of property was carried across the river on appellee's boats, unaccompanied by a custodian or caretaker. The receipts, however, for the ferriage of property unaccompanied by owner or custodian only amount to on an average of one-fifteen hundredth part of the receipts for the ferriage of persons and of property accompanied by the owner or custodian. (Transcript of Record p. 36.)

The City of Sault Ste. Marie, Michigan, borders on the River St. Marys for some three miles, and the territorial limits of the city extend to the national boundary line, which is at this point about mid-stream.

SPECIFICATION OF ERRORS

Has the State of Michigan, through its municipality, the City of Sault Ste. Marie, the power to establish and license ferries on the St. Mary's river, and to fix the rate of ferriage of persons and property from the Michigan shore to the opposite or Canadian side of the river?

Some proofs were introduced at the trial, but most of the facts were stipulated (Transcript of Record 49). The case was argued and submitted, and the court filed a written opinion therein, in which the court in substance held as a matter of law:

"That the City of Sault Ste. Marie had no power to regulate ferries on the St. Marys River, or exact

a license fee for a ferry license from the appellee.”

“That the City of Sault Ste. Marie had no power to establish and fix the rates of ferriage for the transportation of persons and property from the Michigan shore to the opposite shore of the River St. Marys.”

(Transcript of Record p. 89. 90.)

And a decree was entered therein, decreeing that the Ordinance of the City of Sault Ste. Marie:

“is contrary to the Constitution of the United States, and void, and restraining the City of Sault Ste. Marie from enforcing said ordinance. (Transcript of Record p. 93.)

Assignment of error, *Nos. one, two, four and five*, all relate to the holding and decision of the court, and the decree entered therein, on the question of the ordinance being in violation of the Commerce clause of the Constitution of the United States, and are more fully stated as follows:

Assignment of error number one (p. 98).

This assignment of error is based on the decision of the court in holding as a matter of law that:

“The State of Michigan through its municipality, the City of Sault Ste. Marie, has no power to establish and regulate ferries on St. Marys River from the Michigan side across to the Canadian side on the opposite shore of the river and to fix the rate of ferriage from the Michigan shore.”

(Transcript of Record p. 98.)

Assignment of error number two (p. 98).

This assignment of error is based on the decision of the court holding that the ordinance is:

“In controvention of the Constitution of the

United States, and especially of the foreign commerce clause of Section 8, Article 1, of the Constitution of the United States.”

(Transcript of Record p. 98.)

Assignment of error number four (Transcript of Record p. 98).

This assignment of error is based on the court decreeing that the ordinance, so far as appellee is concerned, is:

“Contrary to the Constitution of the United States.”

Assignment of error number five (Transcript of Record p. 98).

This assignment of error is based on the decree of the court wherein it restrains the appellant city—

“From enforcing the provisions of said ordinance or any part thereof against said appellee.”

(Transcript of Record p. 93.)

The above several assignments of error may be considered under one general proposition, above stated:

Are the provisions of the ordinance contrary to the provisions of the treaty between the United States and Great Britain of May 13, 1910?

At the trial the Treaty between the United States of America and the United Kingdom of Great Britain and Ireland relative to boundary waters between the United States and Canada, proclaimed May 13, 1910, was offered in evidence. This Treaty, by article one, provides that:

“The navigation of all navigable boundary waters shall forever continue free and open for the purpose of commerce to the inhabitants and to the

ships, vessels and boats of both countries equally subject however to any laws and regulations of either country within its territory not inconsistent with such privilege of free navigation, and applying equally and without discrimination to the inhabitants, ships, vessels and boats of both countries.”

The court held that the ordinance was in violation of this provision of the treaty and so decreed.

Assignments of error 3 and 4 relate to the decision of the court on the effect of the treaty, and to the decree entered therein, and are more fully stated as follows :

Assignment of error number three (Transcript of Record p. 98).

This assignment of error is based on the court deciding and holding :

“That the provisions of said ordinance is in violation of the treaty existing between the United States of America and the United Kingdom of Great Britain and Ireland relative to boundary waters between the United States and Canada made May 13, A. D. 1910. (Transcript of Record, p. 92.)

Assignment of error number four (Transcript of Record p. 99).

This assignment of error is based on the decree of the court wherein it decrees that said ordinance is :

“Contrary to the treaty (above stated) and void and of no effect.” (Transcript of Record p. 93.)

These assignments of error, Nos. 3 and 4, having relation to the treaty between the United States and Great

Britain, may be considered under one general proposition, as above stated.

BRIEF OF POINTS

The ordinance is not invalid as in violation of the commerce clause of the constitution.

A FERRY IS IN RESPECT TO THE LANDING AND NOT ON THE WATER. THE POINT OF DEPARTURE IS THE SEAT, THE BASE, THE HOME OF THE FERRY.

Conway v. Taylor's Executor, 1 Black 603, 66 U. S. 603, 17 L. ed. 191.

Louisville Ferry Co. v. Kentucky, 188 U. S. 385, 394.

Memphis v. Overton, 3 Yerg. (Tenn.) 387, 390.

State v. Faudre, 54 W. Va. 122, 63 L. R. A. 877.

Powers v. Village of Athens, 99 N. Y. 592.

Discussed on page 21 this brief.

FERRIES ARE LOCAL IN THEIR NATURE AND THE REGULATION OF FERRIES IS A MATTER OF LOCAL CONCERN.

Chilvers v. The People, 11 Mich., p. 51.

St. Clair County v. Interstate S. & T. Trans. Co., 192 U. S., 454.

Discussed on page 19 this brief.

IN ALL LOCAL MATTERS STATE STATUTES ARE VALID UNTIL SUPRSEDED BY ACT OF CONGRESS.

Cooley vs. Port Wardens, 12 How. 310.

- Mobile vs. Kimball, 102 U. S. 691, 702.
Atlantic & Company vs. Philadelphia, 190 U. S. 160.
Bowman vs. Railroad Co., 125 U. S. 465, 507.
Leisy vs. Hardin, 135 U. S., 100.
Stoughtenburgh vs. Hennick, 129 U. S. 141.
Telegraph Co. vs. Pendleton, 122 U. S. 347.
Ouachita Packet Co. vs. Aiken, 121 U. S. 444.
Robbins vs. Taxing District, 120 U. S. 489.
Wabash Railway vs. Illinois, 118 U. S. 557.
Morgan vs. Louisiana, 118 U. S. 455.
Cardwell vs. Bridge Co., 113 U. S. 205, 210.
Willoughby on the Federal Constitution,
Sec. 309.

**THE PRIVILEGE OF KEEPING A FERRY OVER
BOUNDARY STREAMS WITH THE RIGHT TO TAKE
TOLLS FOR PASSENGERS AND PROPERTY IS
GRANTABLE BY THE STATE.**

- Gloucester Ferry Case (1884), 114 U. S. 196,
217.
State vs. Faudre (1903), 54 W. Va. 122.
Ferry Co. vs. Russell (1902), 52 W. Va. 356.
Cross vs. Hopkins (1873), 6. W. Va., 323.
Carroll vs. Campbell (1892), 108 Mo., 550.
State vs. Sickmann (1896), 65 Mo. App. 499.
Tugwell vs. Eagle Pass Ferry Co. (1888), 74
Tex., 480; 13 S. W., 654.
Parsons vs. Hunt (1905), 98 Tex., 420.
Nixon vs. Reid (1896), 8 So. Dak., 507.
Hatten vs. Turnman (1907), 123 Ky., 844.

**THE RIGHT TO ESTABLISH AND REGULATE
FERRIES OVER BOUNDARY STREAMS IS AMONG
THE POWERS RESERVED TO THE STATE.**

- Gibbons vs. Ogden, U. S. (1824), 9 Wheat. 1.
In re Young Fed. Cas., U. S. (1824), No. 18150.
Memphis Corp. vs. Overton, Tenn. (1832), 11
Tenn. (3 Yerg.), 387.
People vs. Babcock, N. Y. (1834), 11 Wend.
587, over Niagara River.
Jones vs. Fanning, Iowa (1844), 1 Morris
(Iowa), 348.
Mills vs. St. Clair Co., Ill. (1845), 7 Ill., 197,
225 (2 Gilman, 235).
Affirmed 49 U. S. 569, 12 L. ed. 1201.
Phillips vs. Town of Bloomington, Iowa
(1848), 1 G. Greene, 498.
Mills et al. vs. County of St. Clair, U. S.
(1850), 49 U. S. 569, 12 L. ed. 1201.
Fanning vs. Gregoire, U. S. (1853), 57 U. S.
524, 14 L. ed. 1043.
Chosen Freeholders vs. State, N. J. (1853),
24 N. J. Law, 718.
Newport vs. Taylor, Ky. (1856), 16 B. Mon.,
699.
Chispella vs. Brown, La. (1859), 14 La. Ann.,
185.
Minturn vs. LaRue, U. S. (1860), 64 U. S.
435, L. ed. 574.
Conway vs. Taylor, U. S. (1861), 66 U. S. 603,
17 L. ed. 191.
Chilves vs. People, Mich. (1862), 11 Mich. 43.
over Detroit River.
Marshall vs. Grimes, Miss. (1866), 41 Miss., 27.
Burlington & Henderson Co. vs. Davis, Iowa
(1878), 48 Iowa, 133.
City of St. Louis vs. Waterloo-Carondelet F.
& Ferry Co., Mo. (1883), 14 Mo. App. 216.

Wiggins Ferry Co. vs. East St. Louis, U. S.
(1883), 107 U. S. 365, 27 L. ed. 419.

Tugwell vs. Eagle Pass Ferry Co., Tex. (1888),
9 S. W. 120, 13 S. W. 654.

On the Rio Grande.

Madison vs. Abbott, Ind. (1889), 118 Ind. 337,
21 N. E. 28.

Carroll vs. Campbell, Mo. (1892), 108 Mo. 550.

State vs. Sickmann, Mo. (1896), 65 Mo. App.
499.

Nixon vs. ^{Price}~~Price~~, S. D. (1896), 67 N. W. 57, 32
L. R. A. 315.

Sisterville Ferry Co. vs. Russell, W. Va.
(1903), 52 W. Va. 356, 59 L. R. A. 513.

State vs. Faudre, W. Va. (1903) 54 W. Va.
122, 63 L. R. A. 877.

N. Y. C. & H. R. R. C. vs. Freeholders, N. J.
(1909), 74 Atl. 954.

Port Richmond & Bergen Pt. Ferry Co. vs.
Freeholders, N. J. (1910), 77 Atl. 1046.

Discussed on page 21 this brief.

**THE RIGHT OF THE STATE TO ESTABLISH AND
REGULATE FERRIES OVER BOUNDARY STREAMS
BETWEEN STATES AND FOREIGN COUNTRIES
HAS BEEN SUSTAINED.**

New York (1834), People vs. Babcock, 11
Wend., 587.

Over Niagara River.

Michigan (1862), Chilves vs. People, 11 Mich.
43. Over Detroit River.

Texas (1888), Tugwell vs. Eagle Pass Ferry
Co., 9 S. W. 120, s. c. 13 S. W. 654.

Discussed on page 41 this brief.

THIS COURT HAS REPEATEDLY HELD THAT THE POWER OVER FERRIES ON BOUNDARY STREAMS WAS RESERVED TO THE STATES.

(1824) *Gibson vs. Ogden* (U. S.) 9 Wheat. 1.

(1824) *In re Young Fed Cas.* No. 18150.

(1850) *Mills et al. vs. County of St. Clair*, 49 U. S. 569, 12 L. ed. 1201.

(1853) *Fanning vs. Gregoire*, 57 U. S. 524, 14 L. ed. 1043.

(1860) *Minturn vs. La Rue*, 64 U. S. 435; 16 L. ed. 574.

(1861) *Conway vs. Taylor*, 66 U. S. 603, 17 ed. 191.

(1883) *Wiggins Ferry Co. vs. East St. Louis*, 107 U. S. 365, 27 L. ed. 419.

Discussed on page 22 this brief.

FERRIES ARE IN AID OF COMMERCE AND NOT AN INTERFERENCE WITH COMMERCE.

Gibbons vs. Ogden, 9 Wheat. 1 (page 235), 6 L. ed. at p. 79.

Fanning vs. Gregoire, 16 How. 524, 57 U. S.; 14 L. ed. 1043.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365; 27 L. ed. 419, 424.

Discussed on page 23 this brief.

WHERE A DOUBT ARISES AS TO THE RESTRICTION OF THE COMMERCE CLAUSE, IT IS TO BE DECIDED IN FAVOR OF THE STATE.

Bank vs. Tennessee, 104 U. S. 495, 26 L. ed. 811.

R. R. Co. vs. Comrs., 103 U. S. 1, 26 L. ed. 359.

Wilson vs. Gains, 103 U. S. 417, 26 L. ed. 401.

R. R. Co. vs. Hamblen Co., 102 U. S. 273, 26 L. ed. 152.

R. R. Co. vs. Gains, 97 U. S. 697, 24 L. ed. 1091.

Ferry Co. vs. East St. Louis, 102 Ill. 570.

See Ferry Co. vs. East St. Louis, 107 U. S. 365., 27 Law ed. 422, where the above cases are reviewed and approved with respect to the right of the state to impose a license tax on a ferry.

If the reserved power in the states to regulate ferries over boundary streams is divisible into those that are exclusive in the state, and those that are merely reserved to the states until congress acts, and if the case at bar falls within the latter class, then the power to regulate ferries on the St. Marys River is still in the State of Michigan, as congress has not by any act of congress deprived the state of this power.

Conway vs. Taylor, 1 Black 603; 66 U. S. 17 L. Ed. 191.

The power of the states over the general subject of commerce, according to some of the adjudications, is divisible into three classes:

First. Those in which the power of the state is exclusive.

Second. Those in which the state may act in the absence of legislation by congress.

Third. Those in which the action of congress is exclusive and the state cannot interfere at all.

Covington & C. Bridge Co. vs. Commonwealth, 154 U. S. 204.

THE ACTS OF CONGRESS RELATIVE TO THE

LICENSING AND ENROLLMENT OF VESSELS DO NOT INTERFERE WITH THE REGULATION OF FERRIES BY THE STATES.

Conway vs. aylor, 1 Black, 603; 66 U. S. 17 L. Ed. 191.

Wiggins Ferry Co. vs. East St. Louis, 107, U. S. 365, 27 L. ed. 419.

The Nassau, 182 Fed. 696; Affirmed in part, 110 C. C. A. 184.

Discussed on page 37 this brief.

THE FACT THAT SOME ARTICLES OF FREIGHT ARE ALSO CARRIED ON THE FERRY BOAT DOES NOT CHANGE OR EFFECT THE RULE APPLIED TO FERRIES.

St. Clair County vs. Interstate S. & C. T. Co., 192 U. S., 48 L. ed. 518, 524-525, 458-468.

Sec. 2972 U. S. Revised Statutes, 1878.

Discussed on page 41 this brief.

A LICENSE FEE IMPOSED AS A CONDITION OF GRANTING A FERRY LICENSE IS NOT A TAX ON COMMERCE WITHIN THE MEANING OF THE COMMERCE CLAUSE OF THE CONSTITUTION.

Wiggins Ferry Co. vs. East St. Louis, 102 Ill. 560, 107 U. S. 365, 27 L. ed. 419

Chilvers vs. People, 11 Mich. 43.

Ash vs. The People, 11 Mich. 347.

Kitson vs. Mayor, etc., of Ann Arbor, 26 Mich. 324.

McQuillin Mun. Ord. Co., Sec. 409.

Discussed on page 43 this brief.

THE POWER OF THE STATE TO LICENSE AND REGULATE FERRIES INCLUDES THE POWER TO

FIX RATES FOR THE FERRIAGE OF PERSONS AND PROPERTY.

Fanning vs. Gregoire, 16 How., 524; 14 L. ed.
1043.

Chosen Freeholders vs. State, 24 N. J. Law,
718.

State vs. Sickmann, 65 Mo., App. 499.

Discussed on p. 43

THE FACT THAT DEFENDANT IN ERROR IS A
FOREIGN CORPORATION DOES NOT EFFECT THE
RIGHT OF THE STATE TO REGULATE FERRIES.

Port Richmon & Bergen Point Ferry Co. vs.
Board of Chosen Freeholders, Supreme
Court of N. J., 1910, 77 Atl. 1046.

Discussed on page 44 this brief.

TREATY

The ordinance of the City of Sault Ste. Marie
regulating ferries on St. Mary's River does not
violate the treaty between Great Britian and the
United States.

THE ORDINANCE DOES NOT INTERFERE WITH
THE PROVISIONS OF THE TREATY THAT "NAVI-
GABLE BOUNDARY WATERS SHALL FOREVER
CONTINUE FREE AND OPEN FOR THE PURPOSE
OF COMMERCE TO INHABITANTS AND TO SHIPS,
VESSELS AND BOATS OF BOTH COUNTRIES
EQUALLY."

Fanning vs. Gregoire, 16 How. 524, (57 U. S.
14 L. ed. 1043, 1047 close of case).

Conway vs. Taylor, 1 Black, 603, (66 U. S. 17 L. ed. 191, 205).

Escanaba, etc., Trans. Co. vs. Chicago, 107 U. S. 678, 27 L. ed. 442, 447.

Discussed on page 45 this brief.

BRIEF OF ARGUMENT.

HAS THE STATE OF MICHIGAN THROUGH ITS MUNICIPALITY, THE CITY OF SAULT STE. MARIE, THE POWER TO ESTABLISH AND LICENSE FERRIES ON ST. MARYS RIVER AND TO FIX THE RATE OF FERRIAGE OF PERSONS AND PROPERTY FROM THE MICHIGAN SHORE TO THE OPPOSITE OR CANADIAN SIDE OF THE RIVER?

It must be conceded that, before the adoption of the Commerce clause of the Constitution of the United States, the power of the states over ferries on boundary waters existed. But it is claimed by the appellee that the power to establish and regulate ferries on boundary waters, at least, was surrendered by the states upon the adoption of the Constitution of the United States, and has ever since rested exclusively in congress.

The Commerce clause of the Constitution of the United States is set forth in the following language:

"Congress shall have power to regulate commerce with foreign nations and among the several states, and with the Indian tribes."

Therefore, the precise question here presented is whether by this clause of the Constitution the power of the states theretofore exercised to establish and regulate ferries on boundary waters, has been wholly divested from

the states, and placed exclusively in congress, or whether that power was still reserved to the states, or at least reserved to the states until congress should divest it by appropriate legislation.

Nature of Ferries.

In order to fully comprehend the effect of this clause of the Constitution, and whether by its adoption it was intended to reserve to the state the power to establish and regulate ferries, or to wholly deprive the states of this power, it may be necessary to consider to some extent the nature of a ferry and the extent of the ferry business throughout the states.

Ferries Are Local.

That a ferry is local in its nature must be conceded.

The very nature of the business makes it local:

“Carrying persons and property from a point on the shore of a stream or small body of water to a point on the opposite shore.”

It effects no other locality. Separate and different ferries may operate across the same stream but a short distance apart, and be wholly independent of each other. The business of ferrying affords an opportunity for persons of all kinds to engage in it. All kinds of crafts from a bark canoe to a steamboat may be used. Different rates of fare may be exacted, as the unscrupulous ferryman may be able to prey on the necessity of unwary travelers. Persons wholly unreliable, and crafts wholly unsafe for passage, may be engaged in it. It is not uncommon to find numerous eager ferrymen soliciting travelers for passage, likened only to the zealous solicitations of hack drivers at railroad depots. The un-

acquainted traveler has no protection for his safety unless ferries are regulated in some way. Serious loss of life is not an uncommon occurrence, owing to the use of unseaworthy crafts for ferries, or through the acts of unskilled or unreliable ferrymen. As the trend of settlement of the United States went westward, ferries were operated without any specific regulation, and in many cases continued without regulation long after the locality had been well settled, and usually until the occurrence of some great disaster, owing to the use of unseaworthy boats, or through the acts of some irresponsible and unscrupulous ferrymen, which resulted in the loss of life, and aroused by public indignation the municipal authorities by ordinance or otherwise adopted means to regulate ferries.

Upon examination of the map of the United States we find that, outside of half a dozen states in the vicinity of the State of Utah, nearly every state in the Union is bounded more or less by streams. It would be difficult to state the exact number of miles of streams that constitute the boundaries on all of the states of the Union. It would run into the thousands of miles. We can in a measure get some idea of the extent of the ferry business that might be carried on when we consider that independent ferries may be established but a short distance apart.

The conditions under which one ferry is operated may be, and generally is, wholly different to that of any other ferry. They may all require different regulations, and different rates of ferriage. All to be regulated according to the necessities of the particular location of the ferry. Ferries therefore are local in their nature. They have been regarded as local by the legislatures of nearly every state in the Union. They have been regarded of such a local nature that state legislatures have provided for their regulation by local bodies and municipalities.

Local bodies and municipalities are familiar with conditions, know what regulations are necessary and are right at hand to enforce them without delay.

Ferries Are of the Landing.

This court long ago held that a ferry was in respect to the landing and not of the water.

Conway vs. Taylor, 66 U. S. 603.

The point of departure is the *seat*, the *base*, the *home* of the ferry.

State vs. Faudre, 54 W. Va., 122.

Power to Regulate Reserved to the States.

Having in mind the local nature of ferries, can it be possible that it was intended by the Commerce clause of the Constitution to give to Congress the exclusive power of regulating this matter, so local in its nature, so stupendous in its number, and so varied in its requirements? Can it be that in adopting the Constitution our forefathers intended to divest the state wholly of this power? That they did not so understand is evident from the subsequent acts of the legislatures of the different states. Each state continued to regulate ferries as before. Judges of the highest state courts regarded that power as reserved to the state, and this court so regarded it.

While it is true the Commerce clause of the Constitution was intended to harmonize interstate and foreign commerce, yet nowhere can it be pointed out that the regulation of ferries on interstate streams, or streams dividing the United States from foreign countries, was considered when adopting the Constitution as a commercial intercourse requiring regulation by congress.

Attorneys may elaborate on the reasons for adopting this clause of the Constitution, and argue that international and foreign commerce must be free and cite judicial decisions of a general nature on this clause of the Constitution; but in determining whether this clause of the Constitution includes ferries we must construe it, having in mind the nature of ferries, and not lose sight of the distinction between the character and nature of ferries when compared with railroads and other interstate or international carriers, and other institutions of interstate and of international character.

At the time of the adoption of the Constitution, and during its discussion, nowhere do we find any argument or reference to ferries as a "crying need" for congressional control, and yet numerous ferries, both interstate and across national boundary streams, had existed for a long time prior to the adoption of the Constitution.

The first definite expression we find from any of the three branches of our Federal Government comes from the judicial branch. In *Gibbons vs. Ogden*, 9 Wheat. 1; 22 U. S. 1, decided in 1824. The decision in this case is an important one on this subject. The highest courts of the states have ever since followed it in ferry cases, and this court for many years construed *Gibbons vs. Ogden* as holding that the power to regulate ferries was among the powers reserved to the states.

In the argument before the court in *Gibbons vs. Ogden*, Mr. Emmett contended that the right to establish and regulate ferries over boundary streams was among the powers reserved to the states, citing numerous acts of the state legislature of New York and other states, and contended that the act under discussion was of a similar nature and governed by the same rule (p. 97). Mr.

Webster conceded that the power to regulate ferries over boundary streams was reserved to the states, but contended that the act in question was not governed by the rules applicable to ferries (p. 19). Chief Justice Marshall, in delivering his opinion, held (p. 203) that "the power to regulate ferries was reserved to the states." Mr. Justice Johnson, in the same case, in his opinion stated :

"As to laws effecting *ferries*, turnpike roads and other subjects of the same class, so far from meriting the epithet of 'commercial regulations,' they are in fact commercial facilities." (9 Wheat., 235.)

In 1853 in *Fanning vs. Gregoire*, 16 How. 534, 57 U. S. 14, *L. ed. at page 1047*, the court said :

"The argument that the free navigation of the Mississippi river, guaranteed by the Ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interfere with the police power of the States in granting ferry licenses."

In 1862, in *Conway vs. Taylor*, 66 U. S. 603, 17 *L. ed.* 191, this court at the close of the case said :

There has been now nearly three-quarters of a century of practical interpretation of the Constitution. During all that time, as before the Constitution had its birth, the States have exercised the power to establish and regulate ferries; Congress never. We have sought in vain for any Act of Congress which involves the exercise of this power.

That the authority lies within the scope of "that immense mass" of undelegated powers which "are

reserved to the States respectively," we think too clear to admit of doubt.

We place our judgment wholly upon that ground.

In 1883, in *Wiggins Ferry Co. vs. East St. Louis*, 107 U. S. 365; 27 L. ed. 419, this court quoted with approval the case of *Conway vs. Taylor*, holding that:

"The power to establish and regulate ferries did not belong to congress under the power to regulate commerce, but belonged to the states, and lay within the scope of that immense mass of undelegated powers reserved by the Constitution to the states."

That the power to establish and regulate ferries on boundary streams was reserved to the States has been determined by a long line of decisions both in the highest courts of the States, as well as by this court.

Gibbons vs. Ogden, U. S. (1824), 9 Wheat, 1.
Wheat. 1.

In re *Young Fed. Cas.*, U. S. (1824), No. 18150.
Memphis Corp. vs. Overton, Tenn. (1832), 11 Tenn. (3 Yerg), 387.

People vs. Babcock, N. Y. (1834), 11 Wend. 587.

Over Niagara River.

Jones vs. Fanning, Iowa (1844), 1 Morris (Iowa), 348.

Mills vs. St. Clair Co., Ill. (1845), 7 Ill., 197.
Affirmed, 49 U. S. 569, 12 L. ed. 1201.

Phillips vs. Town of Bloomington, Iowa (1848), 1 G. Greene, 498.

- Mills et al. vs. County of St. Clair, U. S. (1850), 49 U. S. 569, 12 L. ed. 1201.
- Fanning vs. Gregoire, U. S. (1853), 57 U. S. 524, 14 L. ed., 1043.
- Chosen Freeholders vs. State, N. J. (1853), 24 N. J. Law, 718.
- Newport vs. Taylor, Ky. (1856), 16 B. Mon., 699.
- Chispella vs. Brown, La. (1859), 14 La. Ann., 185.
- Minturn vs. LaRue, U. S. (1860), 64 U. S. 435, 16 L. ed. 574.
- Conway vs. Taylor, U. S. (1861), 66 U. S. 603, 12 L. ed. 191.
- Chilves vs. People, Mich. (1862), 11 Mich. 43. Over Detroit River.
- Marshall vs. Grimes, Miss. (1866), 41 Miss., 27.
- Burlington & Henderson Co. vs. Davis, Iowa (1878), 48 Iowa, 133.
- City of St. Louis vs. Waterloo-Carondelet F. & Ferry Co., Mo. (1883), 14 Mo. App. 216.
- Wiggins Ferry Co. vs. East St. Louis, U. S. (1883), 107 U. S. 365, 27 L. ed. 419.
- Tugwell vs. Eagle Pass Ferry Co., Tex. (1888), 9 S. W. 120, 13 S. W. 654.
- On the Rio Grande.
- Madison vs. Abbott, Ind. (1889), 118 Ind. 337, 21 N. E. 28.
- Carroll vs. Campbell, Mo. (1892), 108 Mo. 550.
- State vs. Sickmann, Mo. (1896), 65 Mo. App. 499.
- Nixon vs. ^{Reed}~~Price~~, S. D. (1896), 67 N. W. 57, 32 L. R. A. 315.
- Sisterville Ferry Co. vs. Russell, W. Va.

(1903), 52 W. Va. 356, 59 L. R. A. 513.
State vs. Faudre, W. Va. (1903) 54 W. Va.
122, 63 L. R. A. 877.
N. Y. C. & H. R. R. C. vs. Freeholders, N. J.
(1909), 74 Atl. 954.
Port Richmond & Bergen Pt. Ferry Co. vs.
Freeholders, N. J. (1910), 77 Atl. 1046.

All of the foregoing authorities hold that the power to regulate ferries on boundary streams is reserved to the states, and while the term "exclusive" is not used, the language used is sufficiently strong to warrant that conclusion.

But it is claimed that the case of *Gloucester Ferry Co. vs. Commonwealth of Pa.*, 144 U. S. 196, modified the former decisions of this court to at least holding that the right to regulate ferries over boundary streams was not exclusive in the states, but reserved merely until congress should divest the power of the States by congressional legislation. And that later, in the case of *Covington Bridge Co. vs. Kentucky*, 154 U. S. 204, the prior decisions of this court were still further modified to the extent of changing the previous adjudication of an exclusive power in the states over ferries into an exclusive right in congress.

Gloucester Ferry Case, Decided 1884.

The *Gloucester Ferry* case arose over an attempt of the State of Pennsylvania to tax the stock of the ferry company, which was a corporation of New Jersey, and paying tax in New Jersey. It was held that ferry boats were a means of commerce and that the tax would be an

additional burden and in violation of the commerce clause of the Constitution.

The court in discussing ferries said:

“The privilege of keeping a ferry with a right to take tolls for passengers and freight is a franchise grantable by the states.”

But further said:

“Ferries between one of the states and a foreign country cannot be deemed beyond the control of congress under the commercial power. They are necessarily governed by its legislation on the importation and exportation of merchandise and the immigration of foreigners—that is, all subject to its regulation in that respect and if they are not beyond the control of the commercial power of congress, neither are ferries over waters separating states.”

But the court, referring to taxation of ferries, further said:

“Freedom from such impositions does not, of course, imply exemption from reasonable charges as compensation for the carriage of persons in the way of *tolls* or *fares*.”

It will be observed that the court is not dealing with the question of the power of the state to *regulate ferries*. Nor were any of the ferry cases previously determined by this court discussed or referred to in the *Gloucester case*.

In the case of *Tugwell vs. Eagle Pass Ferry Co.* (Texas), Vol. 9, S. W. 120, decided in 1888, which was a ferry case arising over a ferry on the Rio Grande between Texas and Mexico, on rehearing (13 S. W. 654) it was urged that the case of *Gloucester Ferry Co. vs. Commonwealth of Pa.* over-ruled the case of *Conway vs. Taylor*,

and it was argued on rehearing that the case fell squarely within the commerce clause of the Constitution, but the court, after careful consideration of the *Gloucester Ferry Co.* case, said:

“Having again carefully examined the opinions in the two cases, we find no ground for this assumption. In *Gloucester Ferry Co. vs. Pennsylvania*, supra, Mr. Justice Field, who delivered the opinion of the court, in speaking of ferries ‘over waters separating’ the states, concedes ‘that the privilege of keeping a ferry, with a right to take toll for passengers and freight, is a franchise grantable by the state, to be exercised within such limits and * * * convenience of the public. (114 U. S. 217, 5 Sup. Ct. Rep. 835.) If the establishment of a ferry over a river separating two states is not an interference with interstate commerce, the establishment of one over the boundary between between the state and a foreign country is not an interference with foreign commerce, and it follows that the establishment of such ferries is a matter within the jurisdiction of the states, respectively, and not of the congress of the United States. We conclude that the decision in *Conway vs. Taylor* is not overruled, either expressly or by implication, and that it is decisive of the question in support of which it was cited. The motion for a new hearing is overruled.”

And as the *Wiggins case* affirmed the same doctrine as *Conway vs. Taylor*, the ruling of the court in the *Tugwell case* applies with equal force to the *Wiggins case*. The *Wiggins case* was also cited with approval in the case of *Postal Telegraph Co. vs. City Council of Charlestown*, 153 U. S. 692, 38 L. ed. 871, on this very point. There is

no good reason for claiming that the *Wiggins case* has been overruled.

In *Old Dominion Steamship Co. vs. Virginia*, 198 U. S. 299, 306; 49 L. ed. 1062, decided in 1905, opinion by Mr. Justice Brewer, the question was on the right of the state to tax property used in interstate commerce, and the Court distinguishing between what was and what was not a burden on commerce quoted from the *Gloucester case*, reiterating:

“Freedom from such impositions does not, of course, imply exemption from reasonable charges as compensation for the carriage of persons in the way of *tolls* or *fares*.”

Covington Bridge Case, Decided 1894.

In regard to the case of *Covington Bridge Co. vs. Kentucky*, 154 U. S. 204, while purely a *bridge case*, there are expressions in the opinion that tend to support defendants contention as to its application to ferries. The court in determining the question of the right to fix tolls on a bridge crossing the Ohio river, discussed matters at considerable length for illustration, and in doing so referred to the regulation of ferries. The nucleus, however, upon which the decision seems to have turned, according to the majority opinion, was that Kentucky sought to regulate the fares and tolls not only from the Kentucky shore across to Ohio, but from Ohio back to Kentucky. The Court, in referring to the case of *Conway vs. Taylor*, said:

“It is true the states have assumed the right in a number of instances, since the adoption of the Constitution, to fix the rates or tolls upon inter-

state ferries and bridges, and perhaps in some instances have been recognized as having the authority to do so by the courts of the several states. But we are not aware of any case in this court where such right has been recognized. Of recent years it has been the custom to obtain the consent of Congress for the construction of bridges over navigable waters, and by the seventh section of the Act of September 19, 1890 (26 Stat. 426, 454), it is made unlawful to begin the construction of any bridge on navigable waters until the location and plan of such bridge have been approved by the Secretary of War, who has also been in frequent instances authorized to regulate the tolls upon such bridges."

The court evidently had in mind the bridge and not particularly a ferry, because in *Fanning vs. Gregoire*, a ferry case decided by this Court in 1853, the power of the State of Iowa to establish ferries across the Mississippi river and to *fix the rates* of the same, was assailed as being in violation of the commercial power of congress and of the ordinance of 1787. And this court held that: "neither of these interfere with the police power of the states in granting ferry licenses."

And it will be borne in mind that in the Covington case, Kentucky sought to regulate not only from its own shores but from the shores of Ohio as well. In the case at bar the ordinance does not attempt to dictate to Canada as to what regulations it may make in its sovereign power. The cases are for this reason clearly distinguishable.

In *United States vs. New Bed. Bridge Fed Cases*, No. 15867, the court held:

"States may regulate *ferry rates*, inspection,

etc., without violating the grant over commerce to Congress, though in some degree affecting commerce, if it does not come in direct conflict with legislation by Congress."

This court in the *Covington Bridge* case, referring to the *Wiggins Ferry* case, said:

"Obviously the case does not touch the question here involved."

The *Wiggins* case was a *ferry* case and not a *bridge* case. It squarely decided that the states had the right to *regulate ferries* across boundary streams. The majority of the court in the *Covington Bridge* case expressly declared that the *question involved* in the *Wiggins* case was not involved in the *Covington* case. Thus the *Wiggins* case has not been overruled by the *Covington Bridge* case, but sanctioned as to the regulation of *ferries* by the state.

But in the *Covington Bridge* case the court placed the regulation of ferries in the class of powers reserved to the states until congress should act, citing *Conway vs. Taylor*, 1 Black, 603.

And further referring to ferries and the decision in the case of *Munn vs. Ill.*, 94 U. S. 113, the court said:

"From time immemorial in England, and in this country from its first colonization, it had been customary to regulate *ferries*, common carriers, hackmen, bakers, millers, wharfingers, inn-keepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. That the decision does not necessarily imply a power in the states to prescribe similar regulations with regard to railroads and other corporations directly engaged in interstate commerce is evident from the remarks of

the chief justice (page 135) in delivering the opinion of the court."

The Court in the *Covington Bridge* case further said:

"The authority of the state, so frequently recognized by this court to fix tolls for use of wharves, piers, etc., * * * cannot be extended to *structures* connecting two states without involving a liability of controversies of a serious nature."

It will be noticed that the court had in mind "*structures*," not ferries, and even upon the question presented in the *Covington* case regarding a *bridge*, Chief Justice Fuller and Justices Field, Gray and White dissented on the question of the right of the State to regulate the tolls on the bridge, but concurred on the ground that the statute impaired the obligation of contract.

In the *Postal Telegraph Cable Co. vs. Charlestown City Council*, 153 U. S. 691, decided about the time of the *Covington Bridge* case, the *Wiggins Ferry Co.* case was cited with approval upon state regulation by six of the nine judges.

In the case of *Henderson Bridge Co. vs. Kentucky*, 166 U. S. 159, decided in , the question was on the right of the state to tax the franchise of the bridge company on a bridge connecting two states, and the court by a majority opinion held:

"That a bridge which is situated in two states, with the sanction of the laws of both, which has been made a post route by Act of Congress, is not an instrument of interstate commerce."

In the dissenting opinion, Mr. Justice White said:

"Where, may I ask, can the line of distinction be drawn between the *Covington Bridge* case and this? * * * Where also, I submit, does a distinction exist between this case and the case of the

ferry between Pennsylvania and New Jersey, considered in the *Gloucester Ferry* case, or the attempt of the State of Illinois to regulate freight charges between the state and New York, embraced in the *Wabash* case. Manifestly, there is an irreconcilable conflict between the decision in this case and the ruling of the Court in the cases just cited. It follows that in order to maintain the tax in the case at bar the *decisions referred to must be and are as I conceive substantially overruled by the opinion now announced.*"

Bridge Cases.

Whether the *Covington Bridge* case has been overruled as stated by Mr. Justice White by the decision in the *Henderson Bridge* case or not, does not, in our judgment, control this case. That was a bridge case. Bridges, owing to the fact that they obstruct navigation, long since became a subject for regulation by Congress. For a time States continued to exercise the power of erecting bridges until Congress acted.

In *Transportation Company vs. Parkersburg*, 107 U. S. 691; 27 L. ed. 589, the court said:

"In the various bridge cases that have come before the courts of the United States where bridges, or dams, have been erected by State authority across navigable streams, the refusal to interfere with their erection has always been based upon the absence of prohibitory legislation by Congress and the power of the States over the subject in the absence of such legislation."

But long ago Congress began legislating in regard to

bridges and navigation. We mention a few of the many acts of Congress on bridges.

By act of Congress, February 20, 1811, the Mississippi and tributaries were declared common highways and forever free. In 1868 permission was given by Congress to build bridges over the Iowa river. By Act of Congress, March 3, 1869, authority was granted to build the Brooklyn bridge. In 1865, Congress took action on the bridge over the Ohio river mentioned in the *Covington Bridge* case, and declared it a lawful structure and post road. Over the Mississippi, by Act of Congress, July 26, 1866, and finally by general acts of Congress of September 26, 1890, and March 3, 1899.

In the *Covington Bridge* case the court said:

“Of recent years it has been the custom to obtain the consent of Congress for the construction of bridges over navigable waters.”

In *Fanning vs. Gregoire*, this court said:

“When navigable rivers, within the commercial power of the Union, may be *obstructed*, one or both of these powers of Congress may be invoked.”

Yet we do not find a single instance where Congress passed an Act relative to the establishment of ferries. Free navigation permits *ferries*, but prohibits *obstructions*, and bridges are very likely to be obstructions.

That this Court does not understand the *Covington Bridge* case to overrule the previous ferry cases, appears from two subsequent decisions: *Williams vs. Wingo*, 177 U. S. 601; and *Louisville Ferry Co. vs. Kentucky*, 188 U. S. 385; the first of these cases decided six years and the second ten years later than the *Covington Bridge* case.

In *Williams vs. Wingo* this Court, after stating the substance of *Fanning vs. Gregoire*, including the fact that

the stream there dealt with formed a State boundary, held that that case was "in point and decisive" (177 U. S. at p. 603) of a similar question arising upon an intra-State stream.

In *Louisville Ferry Co. vs. Kentucky* this Court (188 U. S. at p. 394) cited and approved the case of *Conway vs. Taylor's Executor*.

It is our contention, therefore, that the Covington Bridge case has not overruled the former ferry cases, on the right of the States to regulate *ferries* on boundary streams.

However, if the power to regulate ferries over boundary streams should be held to remain in the States only until Congressional action thereon, we still insist that there is no act of Congress, so far as we have been able to find, that is intended to deprive the States of this power; and, therefore, even under this view of the case, the power still remains in the State of Michigan, and the ordinance in the case at bar is valid.

There is no federal statute which supersedes the States' jurisdiction to regulate ferries.

If the power reserved to the states to regulate *ferries* over boundary streams is divisible into those that are exclusive in the state, and those that are subject to state regulation until the state is divested of the power by congressional legislation, and if the case at bar falls within the latter class, then it becomes a question whether the power of the state to regulate ferries has been divested by Congress.

Assuming for the purpose of the argument on this proposition that in nearly all of the judicial decisions of

the highest courts in the land, from the adoption of the Constitution down, the courts in holding that the power to regulate *ferries* was reserved to the states, did not mean to say that this reserved power was not divisible into those that are exclusive in the states, and those that are permissive only until Congress should act; and that the question of whether the regulation of *ferries* in certain cases, and particularly over boundary streams while reserved to the states, was still open to consideration as to whether the power reserved was exclusive in the states or merely reserved until divested by congressional acts; we contend that there is no congressional act that deprives the State of Michigan from regulating ferries on the St. Marys River, and consequently the ordinance in question is not invalid.

We say, assuming that the power to regulate *ferries* in certain cases was merely reserved to the states until Congress has acted, because in *Gloucester Ferry Co. vs. Commonwealth of Pa.*, 114 U. S., 196, (29 L. ed. 158, at page 166) this court, although without any explanation of the language of the court used in the prior ferry cases, said:

“Ferries between one of the states and a foreign country cannot be deemed, therefore, beyond the control of Congress under the commercial power.”

In the ferry case of *N. Y. C. & H. R. Ry. Co. vs. oBard of Chosen Freeholders of the County of Hudson*, 33 Sup. Ct. Rep. 269, owing to the concessions of the parties as to the issue, the question upon which the case turned was as to whether congress had acted, and it was held that the ferry in that case came within the Act of Congress of February 4, 1887, as a railroad ferry.

Ordinary Ferry.

The ferry in controversy in the case at bar is purely a technical ferry. An ordinary ferry was in *St. Clair County vs. Interstate S. & C. Transfer Co.*, 192 U. S. 454, 48 L ed. 518, held to be

“A ferry for the transportation across the river of persons, animals and freight, at intervals, more or less regular for fare or toll.”

The ferry in the case at bar is no such ferry as the ferry under consideration in the *St. Clair County* case. In that case the ferry was not an ordinary ferry, but one designed for shipping cars, while the ferry in the case at bar is an ordinary ferry for persons, animals and freight. It is not a railroad ferry.

The federal statutes in regard to enrollment, inspection and license of vessels are not involved.

ACTS OF CONGRESS RELATIVE TO THE
LICENSING AND ENROLMENT OF VESSELS DO
NOT INTERFERE WITH FERRIAGE.

In *Conway vs. Taylor's Executor*, 1 Black, 603, it was shown that the vessels enjoined were enrolled and licensed under the laws of the United States. They were entitled, therefore, the Court said, to “The prosecution of the carrying and coasting trade, and of ordinary commercial navigation,” but it was added this gives no authority to “invade the ferry franchise of another, without authority from the holder.” A similar decision was rendered in *Carroll vs. Campbell*, 108 Mo., 550, where the Court said:

"Let it be admitted then, that the defendants are engaged in the carrying trade on the Mississippi River, and their vessel duly officered and licensed; does this give them the right of ferry which they claim, and which they admit they exercised? We think not. The question mooted in this case it not new. It has been met and decided by the Supreme Court of the United States time and again; and it is with great satisfaction that one reads the opinion of that court, and observes with what clearness the jurisdiction of the States and federal government are confined."

"In the case of *Conway vs. Taylors Executor*, the question raised by respondents was examined by Mr. Justice Swayne. It was urged in that case, just as in this, that the Commodore having been enrolled under the laws of the United States, the injunction violated the rights which the enrollment and license gave her in respect to trade, by obstructing the free navigation of the Ohio. The Court held that the decree only enjoined the Commodore from interfering with the ferry privileges;; that it was not intended to exclude or restrain defendants from prosecuting the ordinary business of commerce." (pp. 562-563.)

A long line of authorities hold that the Federal statutes referred to are not involved.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, affirming 102 Ill., 560.

The Nassau, 182 Fed., 696, affirming in part 110 C. C. A., 184.

People vs. Babcock, 11 Wend., 586; opinion by Judge Samuel Nelson.

Mayor vs. Starin, 106 N. Y., 1.

Mayor, etc., vs. Longstreet, 64 How., Pr. 30.
Midland, etc., Ferry Co. vs. Wilson, 28 N. J.,
Eq. 537.
Carroll vs. Campbell, 108 Mo., 550, 562-3.
Marshall vs. Grimes, 41 Miss., 27.
Chilvers vs. People, 11 Mich., 43.

These statutes have been in existence many years, and during all this time State ferry rates throughout the country have been regulated by State law. No suggestion can be found in the decision of any court that this practice contravenes these statutes.

In *Missouri P. R. Co. vs. Larabee Flour Mills*, 211 U. S., 612 (622), 53 L. ed. 361, decided in 1909, opinion by Mr. Justice Brewer, the claim was made that in establishing an Interstate Commerce commission Congress has acted, but the Court said:

“Congress could always regulate interstate commerce and could make specific provisions in reference thereto, and yet that has not been held to interfere with the power of the states in these incidental matters. A mere delegation by Congress to the Commission of a like power has no greater effect and does not of itself disturb the authority of the state.”

Congress recognized the power to regulate ferries as reserved to the States.

The States of Maryland and Virginia were divided by the River Potomac. The legislature of the State of Virginia had vested in the county courts of that state power to establish and regulate ferries. The legislature of the State of Maryland had vested in the county and levy

courts of that state the power to establish and regulate ferries. Portions of each state were ceded to the United States as the District of Columbia, and the same was accepted by Congress in the year 1790. In 1800 Congress removed to the District. And in 1801 Congress by legislative enactment divided the District into two counties. That portion on the east side of the river was designated Washington County, while that on the west side of the river named Alexandria County. At the time these counties were formed Congress recognized the right of the states to regulate ferries, and desiring to regulate ferries in the District of Columbia, along the same line that ferries were regulated in those states, provided by Act of Congress of March 3, 1801 (2 Stat. 115) as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the circuits courts for the District of Columbia shall be and they are hereby invested with the same *power respecting* * * * * * ferries for the County of Alexandria, as have heretofore been vested in the county courts of the commonwealth of Virginia; and for the county of Washington, the same power and authority as have been heretofore exercised by the county and levy courts of the State of Maryland.”

Here is an Act of Congress in which the right of the states to regulate ferries is fully recognized; not only that but Congress legislating for the district of Columbia adopts similar laws for the district.

In re Young Fed. Cases No. 18150.

(2 Cranch, C. C. 453.)

The power of the state to regulate ferries on boundary streams between the states and a foreign country is the same as over streams dividing states.

In 1834, in *People vs. Babcock*, 11 Wend., 587, it was held that the State of New York had the power to regulate ferries from the New York shore over the *Niagara river* between the State of New York and Canada.

In 1862 the Supreme Court of the State of Michigan in *Chilvers vs. People*, 11 Mich., 43, held that the State of Michigan had the power to regulate ferries from the Michigan shore on the Detroit river between Michigan and Canada.

In 1888 the Supreme Court of Texas, in *Tugwell vs. Eagle Pass Ferry Co.*, 9 S. W., 122, held that the State of Texas had power to regulate ferries from the Texas shore on the Rio Grande between Texas and Mexico, which decision was on rehearing affirmed, 13 S. W., 654.

In *Gloucester Ferry Co. vs. Commonwealth of Pa.*, 114 U. S., 196, the court (at page 166 of 29 L. ed.) said:

“If they (ferries between one of the States and a foreign country) are not beyond the control of the commercial power of congress, neither are ferries over waters separating states.”

Here this court regarded ferries over national boundary streams, and those on streams dividing states, to fall within the same rule as to regulations.

Some Articles of Freight Carried.

Testimony was offered by the defendant in error to show that on some occasions some articles of freight were

carried on the ferry boats unaccompanied by the owner or custodian. But it was conceded that the receipts for same only amounted to about one-fifteen hundredth part of the receipts received for passengers, and for freight in care of the owner or custodian. (Transcript of Record p. 36.)

The amount of freight carried unaccompanied by the owner or custodian is so small compared with the amount of business in carrying passengers and parcels of freight in the custody of the owner, or custodian, that it is insignificant and would not change the character of the ferry business into a freighting business, or change the rules of law applicable to the regulation of ferries. But aside from this the business of an ordinary ferry includes carrying *freight*.

St. Clair County vs. Interstate S. & C. Transfer Co., 192 U. S., 454.

Congress, referring to ferries under the revenue laws, designates them as

"Vessels used exclusively as ferry boats carrying passengers, baggage and merchandise."

Sec. 2792, U. S. Revised St., 1878.

A License Fee is Not a Tax on Commerce.

In *Wiggins Ferry Co. vs. East St. Louis*, 107 U. S., 365, this court held:

"It is next insisted by plaintiff in error that the license fee exacted by the ordinance of the City of East St. Louis is a tonnage tax, which the States are forbidden to lay without the consent of Congress. This contention has no ground to rest on. In the first place, the license fee is levied, not on the ferry boat, but on the ferry keeper."

To the same effect in *Chilvers vs. The People*, 11 Mich., 42, 49. See also:

Ash vs. The People, 11 Mich., 347.

Kitson vs. Mayor, etc., 26 Mich., 324.

McQuillin Mun. Ord., Sec. 409.

FIXING RATES.

The power of the state to license and regulate ferries includes the power to fix rates.

In *Fanning vs. Gregoire*, 16 How., 524; 57 U. S. 14, L. ed. 1043, 1046, the City of Dubuque was empowered:

“To license and establish ferries across the Mississippi River from the City of Dubuque to the opposite shore and to *fix the rates.*”

The power of the State to establish and regulate ferries was assailed as an interference with the commercial power of Congress, but this court sustained the power of the state.

In *Wiggins Ferry Co. vs. East St. Louis*, 102 Ill., 560, the City of East St. Louis by ordinance provided for the license, tax and regulation of ferries. The power of the state to regulate was upheld in this court. 107 U. S., 365.

In *United States vs. New Bed. Bridge Co.*, Fed. Cases No. 15867 (1 Woodb. & M., 401), it was held:

“States may regulate ferry rates, inspection, etc., without violating the grant over commerce to Congress, though in some degree affecting commerce, if it does not come in direct conflict with legislation by Congress.”

See also

People vs. City of New York, 32 Barb., 102.

Parker vs. Metropolitan R. C., 109 Mass., 506.

Boston Ferry Co. vs. City of Boston, 101 Mass., 488.

State vs. Sickman, 65 Mo. App., 499.

State vs. Freeholders of Hudson Co., 23 N. L. Law (3 Zab.), 206.

Freeholders of Hudson County vs. State, 24 N. J. Law (4 Zab.), 718.

Stephens vs. Powell, 1 Or., 283.

State vs. Faudre, 54 W. Va., 122.

FOREIGN CORPORATION.

The defendant in error contended in the trial court that as it was a foreign corporation it was entitled to the application of a different rule than if it were a domestic corporation. We contend that there is no authority for such a doctrine. The well recognized rule applies with equal force to both domestic and foreign corporations.

In the *Port Richmond x Bergen Point Ferry* case, supra, the ferry company was a New York corporation, but the right of the State of New Jersey to fix the rates from its shores to New York was affirmed. The Court said:

“Whether the proprietor of the ferry, if a natural person, be a citizen of New Jersey or New York, or, if a corporation, be *chartered by our State or another state* is immaterial. The *rates* authorized by the New York charter to be collected by the corporation in question are no doubt controlling, as to its fares collected *in that state*.. But, when that New York corporation comes over to New Jersey and sets up a *ferry terminus here*, it necessarily does so object to our laws and cannot import a New York statute to justify the collection here of *charges that our laws forbid*. It is the *maintenance*

of a ferry terminus within this state and not the place of birth or of the residence of the proprietor of the ferry that gives the jurisdiction to fix the rates to be collected within this State."

Treaty Not Violated.

It is claimed by counsel for defendant that the ordinance of the city violates the Treaty between Great Britain and the United States. The Treaty provides:

ARTICLE I.

"The High Contracting Parties agree that the navigation of all navigable boundary waters shall forever continue free and open for the purpose of commerce to the inhabitants and to the ships, vessels and boats of both countries equally; subject, however, to any laws and regulations of either country, *within its own territory*, not inconsistent with such privileges of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels and boats of both countries."

(Transcript of Record 73-4.)

The language—

"continue free and open for the purpose of commerce to the inhabitants and to the ships, vessels and boats of both countries"

is much the same as the language contained in the Ordinance of 1787, where it provides that the Mississippi River "shall be a *common highway and forever free*, as well to the inhabitants of said territory as to the citizens of the United States."

And it has been held by the State courts and by this court that the regulation of ferries by the states did not violate these provisions of the ordinance.

In *Fanning vs. Gregoire* the court said:

“The argument that the free navigation of the Mississippi River, guaranteed by the Ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interfere with the police power of the States, in granting ferry licenses.”

In *Conway vs. Taylor*, the decision of the court in *Fanning vs. Gregoire* on this point was quoted and approved.

In *Escanaba, etc., Trans. Co. vs. Chicago*, 107 U. S., 678, 27 ed. at p. 447, the court, dealing with the same subject, said:

“In the sense in which the terms are used by publicists and statesmen, free navigation is consistent with ferries and bridges across a river for the transit of persons and merchandise as the necessities and convenience of the community may require.”

In *Mills vs. St. Clair County*, 7 Ill. (2 Gilman), 197, relative to ferries on the Mississippi River, the court held:

“Such ferries do not conflict with the provisions of any *treaty* made by the United States with any foreign power, or with any act of Congress relative to the free navigation of the waters on which such ferries are operating.”

Affirmed in 49 U. S., (8 How., 569.)

In *N. Y. C. and H. R. R. Co. vs. Frecholders*, (N. J.) 74 Atl., 961, that court, referring to a treaty between the State of New York and New Jersey, said:

“It is pointed out in the opinion of the Supreme

Court (N. J.) that the treaty between New York and New Jersey granted to the State of New York exclusive jurisdiction over the waters between the terminal points of these ferries, and so excludes any exertion of power by New Jersey in regulating, in any way, vessels moving upon those waters. It would seem, however, that whether the jurisdiction of the State of New York runs to the middle of the Hudson river or to the New Jersey shore, it would not effect the question now involved. The *ferry house is within the jurisdiction of New Jersey, and it is the right of the State to regulate the charges which the keeper may impose for transportation to New York that is involved.*"

See also Conway vs. Taylor, *supra*.

Vallejo Ferry Co. vs. Lang and McPherson,
(Cal.), 120 Pa., 421.

We submit, therefore, that the treaty is not violated by the provisions of the Ordinance.

It is also provided by defendant's ferry franchise that :

"The said license shall not at any time during the existence of the license, willfully and knowingly infringe any of the laws or by-laws or of the regulations of the United States of America, or of the State of Michigan, or of the town of Sault Ste. Marie, U. S. A., in reference to ferriage which may be applicable to the said Ferry or such portion thereof as may be within the jurisdiction of any of them, United States of America, State of Michigan and the town of Sault Ste. Marie, or permit or suffer the same to be infringed by any officer, servant or employe of the said Licensee."

(Tran. of Record p. 67-8.)

THE INCONSISTENCY OF APPELLEE'S POSITION.

The strange anomaly of Appellee's position is that while it says to the State of Michigan we have the right to come to your shore and, without permission either from you or from the United States set up and maintain a ferry from your shore, because Canada has given us an *exclusive* franchise to ferry on the St. Marys River, while any attempt on your part to do the same thing is in violation of the Constitution of the United States, and also in violation of the Treaty; our engaging in the ferry business from your shore does not violate the Treaty, but if you attempt it you violate it. We can, under the cover of your Federal Constitution, come to your shore and there establish a ferry, without consent, but you must not establish a ferry there because your Federal Constitution forbids you to do it.

In other words, our Federal Constitution is used as a weapon against us; but, on the other hand, it is used as a shield and protection for foreigners to come to our shore and engage in the business of ferriage.

We do not believe that the Court would sanction the proposition that either the *treaty*, or our *Federal Constitution*, can be used for that purpose.

If our Federal Constitution gives to Congress the power to regulate ordinary ferries whenever Congress assumes control thereof by legislative action, we do not believe Congress would be eager to take over the regulation of ferries on our boundary streams. There might be certain specific instances where Congress would undertake to regulate, or a certain specified character of ferriage over which it would assume control. But to assume regulation of ferries over thousands of miles of boundary

streams, ranging from fifty feet to a mile in width, and possibly with thousands and thousands of ferriage places, operated with all conceivable kind of crafts and all requiring local and perhaps different regulation, would be an undertaking so stupendous that we might justly say that Congress would hesitate before assuming such an undertaking.

And yet ferries must be regulated. If not regulated, travelers have no protection from the zealous solicitations of unscrupulous ferrymen, who prey upon the necessities of the unwary traveler, and there would be no protection to the lives of travelers from the use of unseaworthy crafts, or crafts manned by irresponsible ferrymen. The loss of life is not an uncommon occurrence occasioned by use of such crafts and manned by such persons.

In fact, one of the moving causes for the present ordinance was the result of such a catastrophe on the St. Marys River in which several lives were lost. On the shore of the river within the city of Sault Ste. Marie there are opportunities for numerous ferries. Ferrymen, of all character, along the shore, in their solicitations for patronage, venture to the streets of the city. The charge in many cases are whatever they can induce travelers to pay. It is necessary for the protection of the public that there be some local regulation of ferries to insure safety and protection to travelers. Regulation of ferries on the St. Marys River, from the Michigan side, can be done best by regulation of the municipality.

This court in the case of *Mills vs. The County of St. Clair*, in 49 U. S., 12; L. ed. at p. 1208, referring to local matters, said:

“It would follow, that all State laws, special and general, under whose sanction roads, *ferries* and bridges are established, would be subject to our

supervision. A new source of jurisdiction would be opened, of endless variety and extent, as, on this assumption, all such cases could be brought here for final adjudication and settlement; of necessity, we would be called on to adjudge of fairness and abuse to ascertain whether jurisdiction existed, and this to decide the law and facts; in short, to do that which State courts are constantly doing, in an exercise of jurisdiction over peculiarly local matters; by which means a vast mass of municipal powers, heretofore supposed to belong exclusively to State cognizance, would be taken from the States, and exercised by the general government, through the instrumentality of this court. That such a doctrine cannot be maintained here has in effect been decided in previous cases."

We submit that the regulation of ferries over boundary streams is reserved to the States, and that such regulation is not in violation of the commerce clause of the Constitution, nor of the treaty between the United States and Great Britain; that if the powers so reserved remains only until Congress shall act, then the power is still in the State, as Congress has not acted, and the ordinance is valid.

We submit that the learned trial court was in error in its decision, and the case should be reversed.

JOHN W. SHINE,

Attorney for Appellant.

F. T. McDONALD,

Of Counsel.



Supreme Court of the United States

OCTOBER TERM, 1912.

~~No. 143.~~

Office Supreme Court
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THE CITY OF SAULT STE. MARIE, ANDREW
J. SHORT, MAYOR, ET AL.,
Appellants,

vs.

INTERNATIONAL TRANSIT COMPANY,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF FOR APPELLEE.

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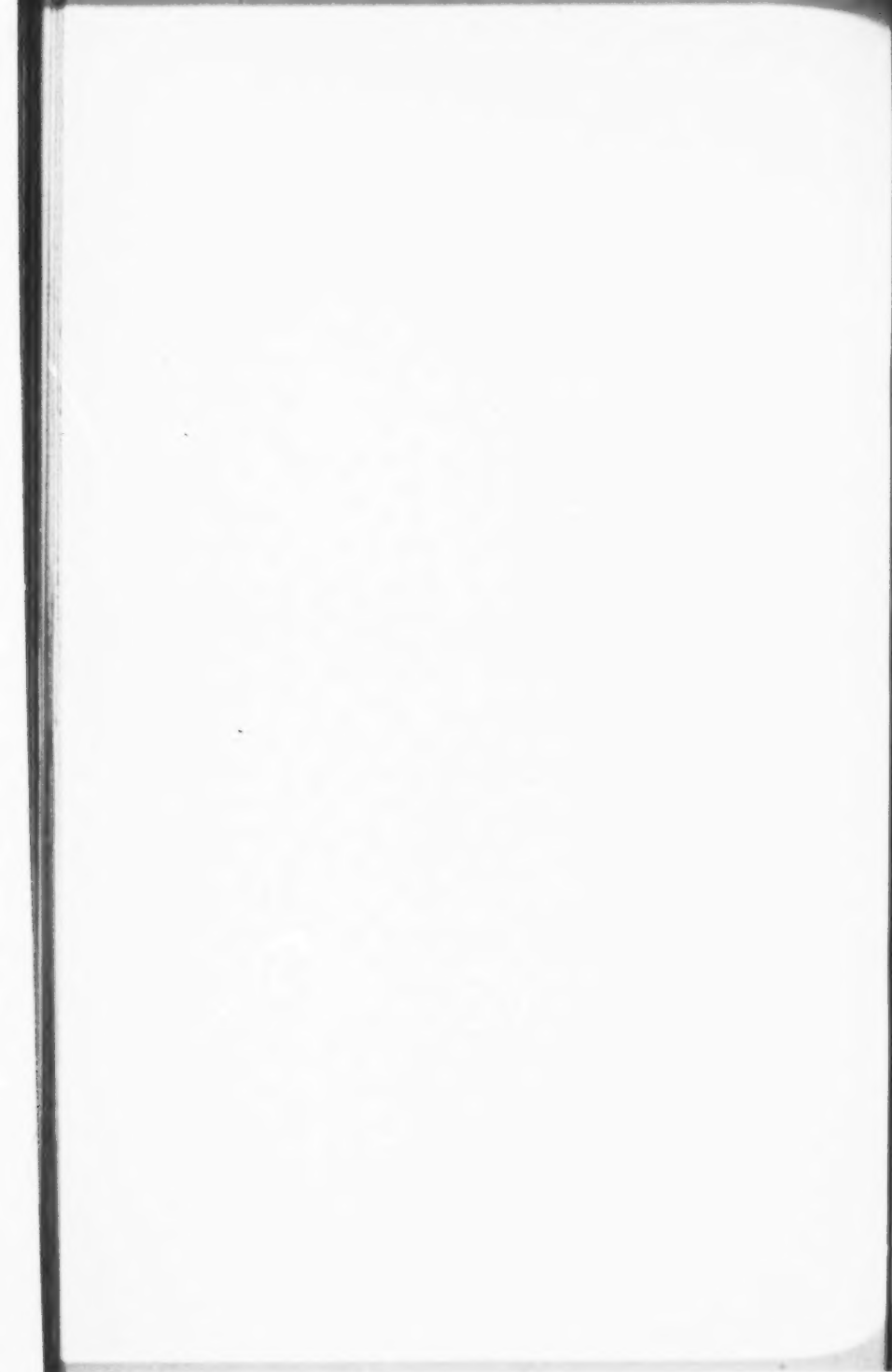
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Supreme Court of the United States

OCTOBER TERM, 1912. No. 749.

THE CITY OF SAULT STE.
MARIE, ANDREW J. SHORT,
MAYOR, ET AL.,

Appellants,

VS.

INTERNATIONAL TRANSIT
COMPANY,

Appellee.

*Appeal from the
District Court of
the United States
for the Western
District of Michigan.*

BRIEF FOR APPELLEE

Statement of Facts

The Statement of Facts in appellant's brief, while in the main correct, is not complete.

The appellee is a corporation organized under the laws of the Province of Ontario. Its original Letters Patent were issued in 1901. By Supplementary Letters Patent, issued in 1902, this corporation was authorized to acquire, construct, own, maintain, charter and navigate steam and other vessels.

To this company there was issued, on the 27th of April, 1906, in the name of the King of Great Britain, etc., a license to operate the ferry in question. This license emanated from the Dominion of Canada, and provided that:

"We do by these presents give and grant unto The International Transit Company, of Sault Ste. Marie, in the Province of Ontario, hereinafter called the licensee, its successors and assigns, exclusive right and privilege of operating our ferry across the St. Mary's River, between Sault Ste. Marie, in Algoma, in the Province of Ontario, and Sault Ste. Marie, in the State of Michigan, in the United States of America."

This license was to continue for ten years from May 1, 1906, upon a yearly rental of \$100, to be paid by the licensee. The license was granted upon certain express conditions incorporated therein, among which were certain requirements as to when the ferry should commence to operate each year and when it might discontinue, how frequently the ferry should cross the river, and what fares and tolls were to be charged. The license contained a schedule of rates and fares covering the transportation of pedestrians, vehicles, baggage and other articles, horses, cattle, sheep, etc.

This license also provides that the Governor in Council shall be at liberty to alter and modify the tariff of charges and tolls should it be deemed expedient in the public interest, and, after notification to the licensee, *no other or larger fares or tolls shall be imposed*. The Governor in Council is also

at liberty at any time to declare the license forfeited when it appears that the licensee has failed to perform or fulfill any of the provisos, restrictions and conditions contained therein. The license also contains a provision requiring observance of the laws of the United States or of the State of Michigan or of the Town of Sault Ste. Marie, in reference to ferriage which may be applicable to said ferry, or such portion thereof as may be within the jurisdiction of any of them. (This license is set forth on pages 66-68 of the Record.)

Under the authority of this license, the appellee established, and has ever since operated, its ferry. In doing this, it occupies no public property upon the American side of the river, but makes use of a private wharf and approach thereto which it has obtained under lease from a private owner.

The Transit Company, as above stated, is a Canadian company, with its headquarters at the City of Sault Ste. Marie, Ontario. It has a dock and warehouse on each side of the river. A statement is made in appellant's brief on page 5, that "All fares are collected on the Michigan side at its ticket office before passengers are permitted to go on board the ferry boats." This is true as to passengers traveling from the American to the Canadian side of the river. The Transit Company has also a ticket office and warehouse on the Canadian side. All moneys are deposited in the Bank of Montreal, Sault Ste. Marie, Ontario. It is true that the person at the present time acting as superintendent of the ferry business

resides at Sault Ste. Marie, Michigan, but the headquarters of the Transit Company are located in the Dominion of Canada, and its funds are deposited there. The two steam vessels owned and operated by it are of British registry and have their situs in the Dominion of Canada, and outside of the property in the City of Sault Ste. Marie, Michigan, which it leases, the property of the company has its situs in Canada.

The impression might be derived from appellant's brief that this ferry and the steamers engaged therein are small and insignificant. The Transit Company owns and operates, in connection with this ferry, two steamers—one steel steamer of 254 gross tons and licensed to carry 531 passengers, and one wooden steamer of 156 gross tons licensed to carry 500 passengers. Each steamer has a certificate of British registry, and each is authorized to run upon the waters between Point Iroquois, Lake Superior and Bruce Mines, situated on the north channel of Lake Huron. These steamers are not merely ferries in the technical sense of the word, as used in *St. Clair County vs. Interstate Transfer Company*, 192 U. S., 454 (p. 467):

"In a strict sense, the ferry business is confined to the transportation of persons, with or without their property, and a ferryman carrying on only a ferry business is bound to transport in no other way."

The appellee does not confine itself to the transportation of persons, with or without their property. On the contrary, during the years 1910-1911, property

was shipped on regular bills of lading, issued precisely as a railroad carrier would issue them, as follows:

In 1910 there were 1,282 such shipments, aggregating 1,153,194 lbs. in weight.

In 1911 there were 1,591 such shipments, aggregating 1,630,832 lbs. in weight.

(Rec., p. 52. To be read in connection with insert marked "Errata, on page 52.")

On September 30, 1911, an ordinance was adopted and given effect by the City of Sault Ste. Marie, Michigan (Rec., pp. 17-19). This ordinance forbids any person or company to operate a ferry boat, or engage in the business of carrying persons or property from the City of Sault Ste. Marie, Michigan, to the Canadian shore without first obtaining a license from the Mayor, and otherwise complying with the terms of the ordinance. The essential features of this ordinance are as follows:

(a) The Mayor is "empowered and authorized" *but not required* to issue a license for the operation of a ferry across the St. Mary's River to the Canadian shore, upon the payment to the City Treasurer of the sum of \$50 per year for each boat so engaged.

(b) Before any license shall be granted, a written application must be made, setting forth the "schedule of rates of ferriage of persons and property proposed to be charged by the applicant *within the territory prescribed by section two (2) of this ordinance.*" (Section 2 of the

ordinance authorizes the issuance of licenses for the transportation of persons and property from the City of Sault Ste. Marie, Michigan, across the St. Mary's River to the opposite shore. The schedule of rates to be charged "within this territory" probably refers to rates of ferriage both ways within this territory.)

(c) No license shall be issued unless the rates of ferriage set forth in the application conform to the schedule set forth in the ordinance itself.

(d) Any licensee failing to conduct his business of ferrying in accordance with the terms and provisions of the ordinance and application for license, shall be deemed to have forfeited his rights to operate said ferry, and shall be subject to the penalties prescribed by the ordinance.

(e) The ordinance specifies minutely the season, frequency and hours of service and rates to be charged for the several classes of transportation.

In all these particulars the conditions imposed by this ordinance are different from those prescribed by the Canadian license under which appellee is operating.

The ordinance also provides:

"Sec. 8. The Mayor is hereby authorized to revoke the license granted to any person, persons or company under this ordinance *whenever he shall be satisfied* that such person, persons or company has intentionally violated any of

the provisions of this ordinance, such revocation to take effect upon written notice from the Mayor to such licensee that said license has been revoked; and any operation of such ferry or ferries within the city limits, after such notice to such licensee, shall be deemed a violation of this ordinance."

No hearing is provided in order to determine whether or not such violation has taken place.

After the passage of this ordinance the Transit Company found itself in the following predicament: It had accepted a license from the Dominion of Canada and had established its ferry under the authority thereof, and was operating its steamers in accordance with its terms. A departure from those terms and conditions rendered this license subject to forfeiture. On the other hand, the City of Sault Ste. Marie, Michigan, had forbidden it to operate its steamers from the American to the Canadian shore without applying for a license and agreeing to conditions imposed by an ordinance of that city differing in its essential features from the terms of the license already accepted. If it continued to operate its steamers without complying with the local ordinance, it was subject to fine and its officers and employees liable to imprisonment.

Shortly after the adoption of the ordinance in question, a captain of one of the Transit Company's steamers was arrested, charged with operating a ferry without a license. He was tried before a Justice of the Peace, convicted and sentenced to pay a fine of \$50 and costs, and, on default thereof, to

be imprisoned in the jail of Chippewa County for a period of thirty days.

Points

1. The appellee is engaged in foreign commerce.

2. Such commerce is not subject to be regulated by the local ordinance in question, because this ordinance interferes with and burdens such foreign commerce, and therefore is in conflict with the commerce clause of the Federal Constitution.

3. The ordinance in question violates the treaty between Great Britain and the United States ratified in 1910, whereby it was agreed that boundary waters, including the St. Mary's River, should be free and open for the purposes of commerce to the inhabitants and the ships, vessels and boats of both countries equally.

Argument

If the ordinance in question can be construed as applying only to such persons as may desire to set up a ferry having its situs in the City of Sault Ste. Marie, Michigan, and desiring to operate under a license to be issued by that municipality, and not as applying to ferries which are created and established under the authority of the Dominion of Canada and

having their situs in Canada, it may be that such ordinance can be upheld. There is some ground for this view to be found in the second section of the ordinance, wherein the Mayor is authorized to grant a license to any persons "to keep, maintain and operate a ferry" for transporting persons and property from the City of Sault Ste. Marie, Michigan, across the St. Mary's River to the opposite shore. This language may mean merely that any person desiring to set up a ferry on the American side of the river for the purpose of transporting persons and property to Canada must apply for a license. As thus construed, the ordinance would purport to regulate only ferries established in the City of Sault Ste. Marie, Michigan—that is, having their situs or base there; and such construction would not interfere with a ferry established under the authority of the Canadian government, having its base or situs in Canada and operating under a license issued by the Dominion government. If the ordinance is given this effect, it might be sustained as a proper exercise of power, but as thus construed, it would not be applicable to the International Transit Company. If possible the ordinance should be so construed as to be given effect. If it cannot be thus construed, it is void; at least so far as the appellee is concerned.

The Appellee Is Engaged in Foreign Commerce

This Court has had occasion within recent years so frequently to define the term "commerce" that it would serve no purpose to review these definitions.

Very recently it was said:

"The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on."

Minnesota Rate Cases, 230 U. S., p. 399.

Were it not for language used in three decisions of this Court (referred to later), we venture the assertion that no one would question that transportation of persons and of property shipped on bills of lading, by ferry, is *commerce* within the meaning of the Federal Constitution. The entire argument to the contrary finds its ultimate support in these three decisions. Before discussing them, let us consider some of the rulings of this Court which may have an important bearing.

"Perhaps some of the divergence of views upon this question among former judges may have arisen from not always bearing in mind the distinction between commerce as strictly defined and its local aids or instruments, or measures taken for its improvement. Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange

of commodities. For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country: and the authority which can act for the whole country can alone adopt such a system. Action upon it by separate states is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as thus defined may not be inaccurate, when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce."

County of Mobile vs. Kimball, 102 U. S., 691 (702).

In *Hall vs. DeCuir*, 95 U. S., 485, transportation of passengers alone was declared to be commerce, and laws regulating carriage of passengers from one State to another were held to be beyond the power of a State.

The commercial power of Congress extends to regulation of boats used as ferries and has been exercised in providing for the inspection of ferry boats.

U. S. R. S., 4426, 4464.

The Hazel Kirke, 25 Fed., 601.

In *Gloucester Ferry Case*, 114 U. S., 196, the Court, in speaking of that commerce which is subject to the exclusive control of the Federal government, said:

"It matters not that the transportation is made in ferry boats, which pass between the States every hour of the day. The means of transportation of persons and freight between

the States does not change the character of the business as one of commerce nor does the time within which the distance between the States may be traversed. Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. * * * And it needs no argument to show that the commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by State legislation."

In *Covington Bridge Co. vs. Kentucky*, 154 U. S., 204, the right of a State to fix charges for transportation over an interstate bridge was considered. This question involved two others, viz.:

"First, whether such traffic across the river is interstate commerce; and, second, whether a bridge is an instrument of such commerce."

The Court held that traffic over this bridge was interstate commerce, and said:

"While the reasons which influenced this Court to hold in the *Wabash Case* that Illinois could not fix rates between Peoria and New York may not impress the mind so strongly when applied to fixing the rates of toll upon a bridge or ferry, the principle is identically the same, and, at least in the absence of mutual or reciprocal legislation between the two States, it is impossible for either to fix a tariff of charges.

With reference to the *second* question, an attempt is made to distinguish a bridge from a ferry boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. Commerce was defined in *Gibbons vs. Ogden*, 9 *Wheat.* 1, 189, to be 'intercourse,' and the thousands of people who daily pass and re-pass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool. While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river. A tax laid upon those who do the business of common carriers upon a certain bridge is as much a tax upon the commerce of that bridge as if the owner of the bridge were himself a common carrier."

The *Corington Bridge Case* is referred to and quoted from in the *Lottery Case*, 188 U. S., 321 (p. 352), as holding definitely that the doctrine in the *Gloucester Ferry* case and the *Wabash* case

(118 U. S., 557) had been expressly reaffirmed, and as definitely deciding that transportation by bridge or ferry was commerce and within the exclusive control of Congress.

In the *Lottery Case* the following excerpt from the opinion in the *Corington* case was quoted with approval:

"While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river."

That under the authority of the commerce clause Congress has legislated so as to include transportation by ferry is stated in a recent opinion by Mr. Chief Justice White, who said, referring to the Employers' Liability Act:

"From the first section it is certain that the act extends to every individual or corporation who may be engaged in interstate commerce as a common carrier. Its all-embracing words leave no room for any other conclusion. It may include, for example, steam railroads, telegraph lines, telephone lines, the express business, vessels of every kind, whether steam or sail, *ferries*, bridge, wagon lines, carriages, trolley lines, etc."

Employers' Liability Cases, 207 U. S., 463 (497).

In the *Henderson Bridge Case*, 166 U. S., 150, a tax on the value of a bridge franchise across the Ohio River, fixed on the basis of gross earnings, was sustained not as a tax on the business of interstate

commerce, but on the franchise granted by the State, as being intangible property situated within the State. Even this indirect approach to regulation of interstate commerce did not meet the approval of the entire court. Mr. Justice White, with the concurrence of three other justices, filed a dissenting opinion, holding that the *Gloucester Ferry* and *Corvington Bridge* cases precluded such a tax, saying:

"I consider it a new and startling doctrine to say that a bridge which is situated in two States, with the sanction of the laws of both, which has been made a post route by act of Congress, is not an instrument of interstate commerce, and that the traffic which goes over such bridge is not such commerce, and that the receipts derived from or charges resulting from such business are not receipts derived from interstate commerce business. Pushed to its legitimate conclusion, this premise deprives the interstate commerce clause of the Constitution of its entire efficacy, and is, I think, in direct conflict with the Constitution as interpreted by this Court from the foundation of the government."

In *New York Central R. Co. vs. Hudson County* 227 U. S. 248, it was held that railroad ferries were not subject to local State regulation because Congress had already given the Interstate Commerce Commission jurisdiction over them. The traffic passing over these ferries was thus recognized as commerce by Congress, and this Court as well.

The commerce in which appellee is engaged is not subject to regulation by the ordinance in question because such ordinance is a burden upon it and conflicts with the federal constitution.

It is insisted that the ordinance in question relates to matters of local concern which, although within the control of Congress are yet subject to State regulation so long as Congress has not taken action. We think this contention is sufficiently answered by the following extracts from decisions of this Court:

"If a State enactment imposes a *direct burden* upon interstate commerce, it must fall regardless of Federal legislation" (p. 396).

The Minnesota Rate Cases, 230 U. S., 352.

"It has, indeed, often been argued, and sometimes intimated, by the Court that, so far as Congress has not legislated on the subject, the States may legislate respecting interstate commerce. Yet, if they can, why may they not add regulations to commerce with foreign nations beyond those made by Congress, if not inconsistent with them, for the power over both foreign and interstate commerce is conferred upon the Federal legislature by the same words. And certainly it has never yet been decided by this Court that the power to regulate interstate as well as foreign commerce, is not exclusively in Congress."

Case of State Freight Tax, 15 Wall. 232 (279).

"A regulation which imposes onerous, perhaps impossible, conditions on those engaged in active commerce with foreign nations, must of necessity be national in its character. It is more than this; for it may properly be called *international*. It belongs to that class of laws which concern the exterior relation of this whole nation with other nations and governments. If our government should make the restrictions of these burdens on commerce the subject of a treaty, there could be no doubt that such a treaty would fall within the power conferred on the President and the Senate by the Constitution. It is in fact, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected, whether the rule be established by treaty or by legislation."

Henderson vs. Mayor of New York, 92 U. S., 259 (272, 273).

"At this late day it is not necessary to cite cases to show that the right to engage in interstate commerce is not the gift of a State, and that it cannot be regulated or restrained by a State, or that a State cannot exclude from its limits a corporation engaged in such commerce."

"There is here and there a suggestion that the State not having granted such right, the alternative is a grant of it by Congress. But this overlooks the affirmative force of the interstate commerce clause of the Constitution. The inaction of Congress is a declaration of freedom from State interference with the transportation of articles of legitimate interstate commerce, and this has been the answer of the

Courts to contentions like those made in the case at bar."

Oklahoma vs. Kansas National Gas Co., 221 U. S. 229, (pp. 260, 261, 262).

"The police power of the State cannot draw within its jurisdiction objects which lie beyond it. * * * On the subject of foreign commerce, including the transportation of passengers, Congress have adopted such regulations as they deemed proper, taking into view our relations with other countries. And this covers the whole ground. The act of New York which imposes a tax on passengers of a ship from a foreign port, in the manner provided, is a regulation of foreign commerce, which is exclusively vested in Congress; and the act is therefore void."

Passenger Cases, 7 How. 283 (408-409).

Even if such regulations could be sustained on the ground that Congress has not acted, in relation to commerce between the States, it would not necessarily follow that foreign commerce could be similarly burdened by local authority. A distinction is drawn in this regard between interstate and foreign commerce in *Bowman vs. Chicago & N. W. Ry. Co.*, 125 U. S., 465, where the Court said (pp. 482-3) :

"It may be argued, however, that, aside from such regulations as these, which are purely local, the inference to be drawn from the absence of legislation by Congress on the subject excludes state legislation affecting commerce with foreign nations more strongly than that affecting commerce among the States. Laws which concern the exterior relations of the United States with other nations and governments are

general in their nature, and should proceed exclusively from the legislative authority of the nation. The organization of our state and Federal system of government is such that the people of the several states can have no relations with foreign powers in respect to commerce or any other subject, except through the government of the United States and its laws and treaties. *Henderson vs. Mayor of New York*, 92 U. S. 259, 273.

The same necessity perhaps does not exist equally in reference to commerce among the States. The power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. * * * And yet in respect to commerce among the States, it may be for the reason already assigned, that the same inference is not always to be drawn from the absence of congressional legislation as might be in the case of commerce with foreign nations."

Four cases are mainly relied on to support the argument that ferries are matters for State control, viz:

Gibbons vs. Ogden, 9 Wheat., 1.

Conway vs. Taylor, 1 Black, 603.

Fanning vs. Gregoire, 16 How., 524.

Wiggins Ferry Co. vs. East St. Louis, 107 U. S., 365.

Conway vs. Taylor and *Fanning vs. Gregoire* were not followed in the *Gloucester Ferry* case nor the *Corington Bridge* case; Mr. Justice Field stating (in the *Gloucester* case, 114 U. S., p. 215) that they were decided upon a mistaken construction given to

the language of Chief Justice Marshall in *Gibbons vs. Ogden*, where it was said that "laws respecting ferries as well as inspection laws," etc., were matters for State control. Mr. Justice Field was of opinion that the court was plainly referring to *intrastate ferries* (114 U. S., pp. 215-216).

Gibbons vs. Ogden. An examination of the arguments in this case shed an important light upon this question, and show clearly that Chief Justice Marshall was *not* referring to *interstate ferries*.

Marshall is said to have followed closely the argument of Webster in saying that laws respecting ferries were regulations of police rather than of commerce in the constitutional understanding of that term. After an examination of these arguments, we submit that Webster was not referring to interstate ferries. The following is the basis for this suggestion:

First. Mr. Emmett, in citing the State laws affecting interstate stage-lines, ferries, etc., was contending, not that ferry regulations were matters of local commerce, but that *transportation of passengers* (e. g., on stage-lines, steamboats, and ferries) *was not commerce at all*.

He maintained that:

"Neither does the case present any ground on which the application of the clause (of the Federal Constitution) respecting commerce can be made; the vessels *not having been engaged in*

trade or commerce, but in carrying passengers for hire" (pp. 84-85).

* * * "the power of Congress could only be extended to fair cases of trading, * * * and not to the mere transportation of passengers * * * This distinction is in itself, of great consequence, and peculiarly applicable to the case before the court, in which the complainant states and the defendant admits the *vessels to have been employed in the transportation of passengers*" (9 Wheaton, p. 89).

"It could not, I think, be seriously contended that Congress can regulate the carrying of passengers from any part of the Union who are traveling to Ballston, Saratoga, or any other place for health or pleasure. * * * That falls within the sphere of State legislation."

(Note here that Mr. Emmett was not arguing that transportation by *ferries* constituted an exception to the rule that Congress was to regulate interstate commerce, but that interstate passenger traffic was not commerce.)

Mr. Emmett continued:

"Those who contend that navigating by steamboats between different States falls within the powers of Congress, must admit that it would have the power to prohibit the carrying of goods, wares, and merchandise in a steamboat from any foreign place or different State to another. Now, would Congress have power to prohibit the carrying of passengers in steamboats from Norfolk or Elizabethtown to New York? Certainly such power could not be contended for; and why not? *Only because the powers of Congress have nothing to do with the carrying of passengers.*" (Pages 95-96.)

After some further argument along this line, Mr. Emmett said:

"The States have always legislated on a different principle, whether the conveyance of passengers was to be by land or by water. Every State has probably made numerous provisions on this subject;"

and he then cited the State laws respecting stage coaches and ferries (p. 97).

His contention was that "commerce" meant trade, the exchange and transportation of commodities, etc., and as proof of this he cited the State laws referred to as showing the practical construction of the term "commerce" *not to include passenger transportation.*

Mr. Emmett, in citing these State laws, was not, therefore, contending that ferry regulations were matters of internal commerce or local police over which Congress had no power, but that *passenger traffic was not commerce at all*, and that therefore Congress had no jurisdiction as to such traffic, interstate or otherwise.

Second. Mr. Oakley, on the other hand, contended (pp. 64-65) that the power to regulate commerce was concurrent, and in support referred to the enactment of State laws affecting *the internal trade of the States, including turnpike roads, toll bridges, stage wagons, ferries over navigable rivers and lakes.* He was referring to the *internal commerce of a State*, which, in the same paragraph, he thus defines:

"Internal commerce must be that which is

wholly carried on within the limits of a State, as where the commencement, progress, and termination of the voyage are wholly confined to the territory of the State."

"All such laws," continued Mr. Oakley (*i. e.*, affecting roads, bridges, ferries, etc., wholly within a State), "must necessarily affect, to a great extent, the foreign trade, and that between the States, as well as the trade among the citizens of the same State. But although these laws do thus affect trade and commerce with other States, Congress cannot interfere, as its power *does not reach the regulation of internal trade,*" etc.

It is clear that Mr. Oakley was referring to internal trade as defined by him, that is, purely intra-state, and to ferries and bridges that were intra-state.

A comparison of this argument with Webster's will show that it was *to this argument* that Webster replied as follows:

"The argument alleges, that the States have a concurrent power with Congress, of regulating commerce; and its proof of this position is, that the States have, without any question of their right, passed acts respecting turnpike roads, toll bridges, and ferries. These are declared to be acts of commercial regulation, affecting not only the interior commerce of the State itself, but also commerce between different States. Therefore, as all these are *commercial regulations*, and are yet acknowledged to be rightfully established by the States, it follows, as is supposed, that the States must have a concurrent power to regulate commerce.

"Now, what was the inevitable consequence

of this mode of reasoning? Does it not admit the power of Congress, at once, upon all these minor objects of legislation? If all these be regulations of commerce, within the meaning of the Constitution, then, certainly, Congress having a concurrent power to regulate commerce, *may establish ferries, turnpikes, bridges, etc., and provide for all this detail of interior legislation.* To sustain the interference of the State, in a high concern of maritime commerce, the argument adopts a principle which acknowledges the right of Congress, over a vast scope of *internal legislation, which no one has heretofore supposed to be within its powers.*" (Webster was here certainly referring to legislation upon purely intrastate subjects.) "But this is not all; for it is admitted, that when Congress and the States have power to legislate over the same subject, the power of Congress, when exercised, controls or extinguishes the State power; and, therefore, the consequences would seem to follow, from the argument, that all State legislation, over such subjects as have been mentioned, is, at all times, liable to the superior power of Congress; a consequence which no one would admit for a moment. The truth was, he thought, that all these things were, in their general character, rather regulations of police than of commerce, in the constitutional understanding of that term. A road, indeed, might be a matter of great commercial concern. In many cases it is so; and when it is so, he thought there was no doubt of the power of Congress to make it. But generally speaking, roads, and bridges, and ferries, though, of course, they affect commerce and intercourse, do not obtain that importance and elevation, as to be deemed *commercial regulations.*"

Chief Justice Marshall followed the same idea in his opinion :

"It is not intended to say that these words (commerce among the several States) comprehend that commerce *which is completely internal*, which is carried on between man and man in a State, * * * and which does not extend to other States" (p. 194). "The completely internal commerce of a State, then, may be considered as reserved for the State itself" (p. 95) (implying that commerce not *completely internal* had not been reserved).

"They" (inspection laws) "form a portion of that immense mass of legislation which embraces everything *within the territory of a State* not surrendered to the General Government. * * * Inspection laws, quarantine laws, health laws, of every description, as well as laws for regulating *the internal commerce of a State* and those which respect turnpike roads, ferries, &c., are component parts of this mass."

Clearly, Chief Justice Marshall was referring to subjects that concerned the purely internal commerce of a State—as previously defined by him.

Third. As further proof that *Gibbons vs. Ogden* did not concede control of interstate ferries to the States, attention is called to the fact that the State law in that case was stricken down *in face of the argument that Livingston and Fulton's license was merely an interstate ferry license.*

"Is it" (respondent's license) "in truth anything more than *an exclusive right of ferry over the waters of Hudson's River?*" (Argument of Mr. Oakley, p. 75.)

We submit, therefore, that Mr. Justice Field in the Gloucester Ferry case and Mr. Justice Brown in the Covington case were not mistaken in their construction of *Gibbons vs. Ogden*, and the numerous cases decided by this court on their authority have not all proceeded upon a fundamental misconception of what was there decided.

Fanning vs. Gregoire, 16 How. 524, contains the statement:

"The argument that the free navigation of the Mississippi River, guaranteed by the ordinance of 1787, or any right which may be supposed to arise from the exercise of the commercial power of Congress, does not apply in this case. Neither of these interfere with the police power of the States in granting ferry licences. When navigable rivers within the commercial power of the Union may be obstructed, one or both of these powers may be invoked."

This statement was in no way material to the decision of the case. The suit was brought by a ferry owner, claiming an exclusive license from the State, to enjoin the operation of a ferry under a city license. As the State license was held to be not exclusive in its terms, there was no occasion to consider the validity of either of the licenses.

Conway vs. Taylor, 1 Black, 603, affirms the right of a State to grant licenses for interstate ferries. On examination of the opinion, however, it will be found that the facts did not require the broad statements that were made. The facts were these: Taylor, the complainant's father, originally owned the

entire water front of Newport, Kentucky. In 1794, he established a ferry under license from State authority, giving him exclusive ferry rights for the distance covered by his own lands. In 1795, he replatted his lands, conveying to the city the water front as a common, but reserving "every advantage and privilege which he has not disposed of, or which he would by law be entitled to." This reservation would include the right to a ferry landing, and the attempted grant by any authority of such a landing privilege on the land conveyed by him with such reservation would be an illegal infringement of his rights. The decision of the Court was a vindication of his property rights.

It was said in this case:

"Undoubtedly, the States, in conferring ferry rights, may pass laws so infringing the commercial power of the nation that it would be the duty of this Court to annul or control them."

This suggestion is noted as significant in the case of *St. Clair County vs. Interstate Transfer Co.*, 192 U. S., 454, where it is said (p. 461) in reviewing the *Conway case*:

"In conclusion, however, the Court pointed out (p. 634) that undoubtedly if in the grant of a ferry privilege there were contained provisions repugnant to the commerce clause, it would be the duty of the Court to prevent their enforcement."

That such an ordinance as is here in question is a "provision repugnant to the commerce clause" which

"it is the duty of this Court to annul," is distinctly held in the *Covington Bridge case supra* (154 U. S., 204), where the *Conway case* is referred to as follows:

"The opinion, however, did not pass upon the question of the right of one State to regulate the charge for ferriage, nor does it follow that because a State may authorize a ferry or bridge from its own territory to that of another State, it may regulate the charges upon such bridge or ferry. A State may undoubtedly create corporations for the purpose of building and running steamships to foreign ports, but it would hardly be claimed that an attempt to fix a scale of charges for the transportation of persons or property to and from such foreign ports would not be a regulation of commerce and beyond the constitutional power of the State. It is true the States have assumed the right in a number of instances, since the adoption of the Constitution, to fix the rates or tolls upon interstate ferries and bridges, and perhaps in some instances have been recognized as having the authority to do so by the courts of the several States. But we are not aware of any case in this court where such right has been recognized."

Wiggins Ferry Co. vs. East St. Louis, 107 U. S. 365, appears on its face to be very similar to the case at bar, and to the *Gloucester Ferry case*, but it should be observed that the *Wiggins Ferry case* differs from either of these in that the corporation on which the license tax was imposed was incorporated and authorized to do business by the State under whose authority the tax was imposed, and its boats

and property were kept within the State. This was given weight by the Court, when it said (p. 373):

"The levying of a tax upon vessels or other water craft or the exaction of a license fee by the State within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the Constitution of the United States."

The distinction here suggested is pointed out in the *Corington Bridge* case, *supra*:

"So too, in *Wiggins Ferry Co. vs. East St. Louis*, 107 U. S. 365, it was held that a State had the power to impose a license fee, either directly or through one of its municipal corporations, upon ferry-keepers living in the State, for boats which they owned and used in conveying from a landing in the State passengers and goods across a navigable river to another State. It was said that 'the levying of a tax upon vessels or other water craft, or the exaction of a license fee by the State within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the Constitution of the United States.' Obviously the case does not touch the question here involved. Upon the other hand, however, it was held in *Moran vs. New Orleans*, 112 U. S. 69, that a municipal ordinance of New Orleans imposing a license tax upon persons owning and running tow boats to and from the Gulf of Mexico was void as a regulation of commerce."

The distinction is precisely the same as that between the *Corington Bridge* and *Henderson Bridge* cases, above mentioned. Unless so distinguished, the *Wiggins Ferry* case is inconsistent with the *Glouces-*

ter Ferry case, and must be regarded as overruled by it.

On the other hand:

"It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a State legislature could prohibit a foreign corporation—an English or a French transportation company, for example—from coming into its borders and landing goods and passengers at its wharves and soliciting goods and passengers for a return voyage, without first obtaining a license from some State officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of State legislation, but within that of national legislation. *Inman Steamship Co. vs. Tinker*, 94 U. S., 238."

Crutcher vs. Kentucky, 141 U. S., 47 (57, 58).

The foregoing was quoted with approval in *Western Union Telegraph Co. vs. Kansas*, 216 U. S., 1 (p. 21), where it was also said, quoting from the same case:

"We have repeatedly decided that a State law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

The *Western Union Telegraph* case also refers approvingly to the *Gloucester Ferry* case.

The ordinance in question violates the treaty between the United States and Great Britain.

The treaty in question is designed "to prevent disputes regarding the use of boundary waters," and "to make provision for the adjustment and settlement of all such questions as may hereafter arise." (Rec., 73.)

In the preliminary article, the boundary waters are defined as "the waters from main shore to main shore of the lakes and rivers or connecting waterways or the portions thereof along which the international boundaries between the United States and the Dominion of Canada passes." (Rec., 73.)

Article 1 provides "that the navigation of all navigable boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels and boats of both countries equally, subject, however, to any laws and regulations of either country within its own territory not inconsistent with such privilege of free navigation and applying equally and without discrimination to the inhabitants, ships, vessels and boats of both countries."

One of the purposes of navigation is to transport persons and property across these boundary waters, and their free navigation for that purpose is as important as for any other.

Freedom of navigation is not consistent with an

ordinance which forbids either persons or property, and property whether accompanied by the owner or shipped on bills of lading or otherwise, from being transported from the American to the Canadian shore, without permission first obtained from the Mayor of the local municipality.

The ordinance in question authorizes, but does not require, the Mayor to grant such license. He could not be compelled to grant the same to the appellee even if application were made therefor. Freedom of navigation is not consistent with the right on the part of a municipality to grant or withhold a license to engage therein at its discretion, nor with the right of such municipality to impose conditions upon the exercise of such right.

That the language of this Treaty prohibits such regulations as are here sought to be imposed, at least as against citizens or subjects of another nation, is shown by the construction placed by the Supreme Court on the similar language of the Ordinance of 1787:

"It seems clear, therefore, that according to the construction given by this Court to the clause in the Act of Congress relied upon by the Court below, it does not refer to physical obstructions, but to political regulations which would hamper the freedom of commerce."

Willamette Iron Bridge Co. vs. Hatch, 125 U. S., 1 (12).

We have here a corporation organized under the authority of a foreign State, engaged in navigating these boundary waters for a lawful purpose and engaged in foreign commerce over them. Under the

license which it has accepted, and under which it has established its ferry, it is required to conform to certain specified conditions. The city of Sault Ste. Marie, Michigan, forbids this company from enjoying its license or engaging in this navigation except with its permission, upon payment of an annual license fee and upon conditions which are inconsistent and in conflict with the terms of the license granted by the Dominion Government in all essential particulars.

We submit that these burdens are an unwarranted interference with the foreign commerce in which the appellee is engaged; that they are in direct conflict with the terms of the treaty between the United States and Great Britain, and that they are beyond the power of the municipality to impose.

If local cities, villages and hamlets may forbid foreign citizens and foreign vessels from engaging in navigation upon our boundary waters for the purpose of transporting persons and property between these two countries until permission has been obtained from such local municipalities, upon whatever conditions they may see fit to impose, serious complications may arise. Certainly such international commerce is not free. What would prevent these municipalities from excluding foreign applicants for a license altogether, or by the imposition of discriminating license fees, or different rates of toll, create conditions so unequal as to work a practical exclusion?

Nor is the contention sound that a State may regulate and license ferries for transportation of passengers from its own shore to the shore of another country. If transportation by ferry across a boundary stream is commerce, and is to be free to the vessels of either country, it should be equally so in either direction.

"The genius and character of the whole government," said Chief Justice Marshall, "seem to be, that its action is to be applied to all external concerns of the nation * * *"

Quoted in *Minnesota Rate Cases*, p. 398.

These considerations and others which readily suggest themselves emphasize the importance of adhering to the rule already laid down by this Court that transportation by ferries is commerce and that the regulation of tolls upon an interstate bridge (and upon ferries which have been held to be practically the same thing) is an interference with interstate commerce.

We submit that when considered with reference to foreign commerce the question

"is, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected."

Henderson vs. Mayor of New York, (*Supra*).

HENRY E. BODMAN,

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ALEXIS C. ANGELL,

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Of Counsel.



**CITY OF SAULT STE. MARIE *v.* INTERNATIONAL
TRANSIT COMPANY.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN.**

No. 323. Argued March 20, 1914.—Decided June 8, 1914.

A State may not make commercial intercourse with another State or a foreign country a matter of local privilege and require that it cannot be carried on without its consent, and to exact a license fee as the price of that consent.

Transportation between States and foreign countries is within the protection of the constitutional grant to Congress, and this includes transportation by ferry. *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196.

One otherwise enjoying full capacity for the purpose of carrying on interstate or foreign commerce cannot be compelled to take out a local license for the mere privilege of carrying it on.

An ordinance enacted by the city of Sault Ste. Marie under state authority, requiring a license fee for the operation of ferries to the Canadian shore opposite, *held* unconstitutional, as applied to the owners of a ferryboat plying from the Canadian shore, as a burden on interstate commerce.

Quære, whether such an ordinance is void as violative of Article I of the Treaty of 1909 with Great Britain.

194 Fed. Rep. 522, reversed.

THE facts, which involve the right of the State, or a municipality acting under its authority, to establish ordinances regulating maintenance of ferries between its ports and one of a foreign government and the construction of the treaty of 1909 with Great Britain, are stated in the opinion.

Mr. John W. Shine, with whom *Mr. F. T. McDonald* was on the brief, for appellants:

The ordinance is not invalid as in violation of the commerce clause of the Constitution.

A ferry is in respect to the landing and not on the water. The point of departure is the seat, the base, the home of the ferry. *Conway v. Taylor*, 1 Bl. 603; *Louisville Ferry Co. v. Kentucky*, 188 U. S. 385, 394; *Memphis v. Overton*, 3 Yerg. (Tenn.) 387, 390; *State v. Faudre*, 54 W. Va. 122; *Powers v. Athens*, 99 N. Y. 592.

Ferries are local in their nature and the regulation of ferries is a matter of local concern. *Chilvers v. People*, 11 Michigan, 51; *St. Clair County v. Interstate Sand Co.*, 192 U. S. 454.

In all local matters state statutes are valid until superseded by act of Congress. *Cooley v. Port Wardens*, 12

How. 310; *Mobile v. Kimball*, 102 U. S. 691, 702; *Atlantic &c. Co. v. Philadelphia*, 190 U. S. 160; *Bowman v. Railroad Co.*, 125 U. S. 465, 507; *Leisy v. Hardin*, 135 U. S. 100; *Stoughtenburgh v. Hennick*, 129 U. S. 141; *Telegraph Co. v. Pendleton*, 122 U. S. 347; *Ouachita Packet Co. v. Aiken*, 121 U. S. 444; *Robbins v. Taxing District*, 120 U. S. 489; *Wabash Railway v. Illinois*, 118 U. S. 557; *Morgan v. Louisiana*, 118 U. S. 455; *Cardwell v. Bridge Co.*, 113 U. S. 205, 210; Willoughby's Fed. Const., § 309.

The privilege of keeping a ferry over boundary streams with the right to take tolls for passengers and property is grantable by the State. *Gloucester Ferry Case*, 114 U. S. 196, 217; *State v. Faudre*, 54 W. Va. 122; *Ferry Co. v. Russell*, 52 W. Va. 356; *Cross v. Hopkins*, 6 W. Va. 323; *Carroll v. Campbell*, 108 Missouri, 550; *State v. Sickmann*, 65 Mo. App. 499; *Tugwell v. Eagle Pass Ferry Co.*, 74 Texas, 480; *Parsons v. Hunt*, 98 Texas, 420; *Nixon v. Reid*, 8 So. Dak. 507; *Hatten v. Turnman* 123 Kentucky, 844.

The right to establish and regulate ferries over boundary streams is among the powers reserved to the State. *Gibbons v. Ogden*, 9 Wheat. 1; *In re Young*, Fed. Cas. No. 18,150; *Memphis v. Overton*, 11 Tennessee (3 Yerg.), 387; *People v. Babcock*, 11 Wend. 587; *Jones v. Fanning*, 1 Morris, 348; *Mills v. St. Clair Co.*, 7 Illinois, 197, 225, aff'd 8 How. 569; *Phillips v. Bloomington*, 1 G. Greene, 498; *Fanning v. Gregoire*, 16 How. 524; *Chosen Freeholders v. State*, 24 N. J. Law, 718; *Newport v. Taylor*, 16 B. Mon. 699; *Chispella v. Brown*, 14 La. Ann. 185; *Minturn v. LaRue*, 23 How. 435; *Conway v. Taylor*, 1 Black, 603; *Chilvers v. People*, 11 Michigan, 43; *Marshall v. Grimes*, 41 Mississippi, 27; *Burlington v. Davis*, 48 Iowa, 133; *St. Louis v. Waterloo Ferry Co.*, 14 Mo. App. 216; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365; *Tugwell v. Eagle Pass Ferry*, 9 S. W. Rep. 120; *S. C.*, 13 S. W. Rep. 654; *Madison v. Abbott*, 118 Indiana, 337; *Carroll v. Camp-*

bell, 108 Missouri, 550; *State v. Sickmann*, 65 Mo. App. 499; *Nixon v. Reid*, 67 N. W. Rep. 57; *Sisterville Ferry Co. v. Russell*, 52 W. Va. 356; *State v. Faudre*, 54 W. Va. 122; *N. Y. C. & H. R. R. Co. v. Freeholders, N. J.*, 74 Atl. Rep. 954; *Port Richmond Ferry Co. v. Freeholders, N. J.*, 77 Atl. Rep. 1046.

The right of the State to establish and regulate ferries over boundary streams between States and foreign countries has been sustained. *People v. Babcock*, 11 Wend. 587; *Chilvers v. People*, 11 Michigan, 43; *Tugwell v. Eagle Pass Ferry Co.*, 9 S. W. Rep. 120, S. C., 13 S. W. Rep. 654.

This court has repeatedly held that the power over ferries on boundary streams was reserved to the States. *Gibbons v. Ogden*, 9 Wh. 1; *In re Young*, Fed. Cas. No. 18,150; *Mills v. St. Clair County*, 8 How. 569; *Fanning v. Gregoire*, 16 How. 524; *Minturn v. LaRue*, 23 How. 435; *Conway v. Taylor*, 1 Black, 603; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365.

Ferries are in aid of commerce and not an interference with commerce. *Gibbons v. Ogden*, 9 Wh. 1, 235; *Fanning v. Gregoire*, 16 How. 524; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365.

Where a doubt arises as to the restriction of the commerce clause, it is to be decided in favor of the State. *Bank v. Tennessee*, 104 U. S. 495; *Railroad Co. v. Comrs.*, 103 U. S. 1; *Wilson v. Gains*, 103 U. S. 417; *Railroad Co. v. Hamblen Co.*, 102 U. S. 273; *Railroad Co. v. Gains*, 97 U. S. 697; *Ferry Co. v. East St. Louis*, 102 Illinois, 570. See *Ferry Co. v. East St. Louis*, 107 U. S. 365.

The acts of Congress relative to the licensing and enrollment of vessels do not interfere with the regulation of ferries by the States. *Conway v. Taylor*, 1 Bl. 603; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365; *The Nassau*, 182 Fed. Rep. 696; affirmed in part, 110 C. C. A. 184.

The fact that some articles of freight are also carried on the ferryboat does not change or affect the rule applied

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Opinion of the Court.

to ferries. *St. Clair County v. Interstate Sand Co.*, 192 U. S. 458; § 2972, Rev. Stat.

A license fee imposed as a condition of granting a ferry license is not a tax on commerce within the meaning of the commerce clause of the Constitution. *Wiggins Ferry Co. v. East St. Louis*, 102 Illinois, 560, S. C., 107 U. S. 365; *Chilvers v. People*, 11 Michigan, 43; *Ash v. People*, 11 Michigan, 347; *Kitson v. Ann Arbor*, 26 Michigan, 324; *McQuillin*, Mun. Ord. Co., § 409.

The power of the State to license and regulate ferries includes the power to fix rates for the ferriage of persons and property. *Fanning v. Gregoire*, 16 How. 524; *Chosen Freeholders v. State*, 24 N. J. Law, 718; *State v. Sickmann*, 65 Mo. App. 499.

The fact that defendant in error is a foreign corporation does not affect the right of the State to regulate ferries. *Port Richmond Ferry Co. v. Board of Chosen Freeholders*, 77 Atl. Rep. 1046.

The ordinance of the city of Sault Ste. Marie regulating ferries on St. Mary's river does not violate the treaty between Great Britain and the United States.

The ordinance does not interfere with the provisions of the treaty that "navigable boundary waters shall forever continue free and open for the purpose of commerce to inhabitants and to ships, vessels and boats of both countries equally." *Fanning v. Gregoire*, 16 How. 524; *Conway v. Taylor*, 1 Bl. 603; *Escanaba Trans. Co. v. Chicago*, 107 U. S. 678.

Mr. Henry E. Bodman, with whom *Mr. Alexis C. Angell*, *Mr. Herbert E. Boynton* and *Mr. James Turner* were on the brief, for appellee.

MR. JUSTICE HUGHES delivered the opinion of the court.

This suit was brought by the International Transit Company, a Canadian corporation, to restrain the enforce-

ment of an ordinance adopted, in the year 1911, by the city of Sault Ste. Marie, Michigan. The ordinance related to the maintaining of ferries from that city across the St. Mary's river to the opposite shore in the Province of Ontario; and the complainant contended that, as applied to it, the ordinance was a violation of the commerce clause of the Federal Constitution and of article I of the treaty of January 11, 1909, 36 Stat. 2448, 2449, between the United States and Great Britain. The District Court granted the relief as prayed (194 Fed. Rep. 522); and this appeal is brought.

The Transit Company holds a license from the Dominion Government to operate a ferry between Sault Ste. Marie, Ontario, and Sault Ste. Marie, Michigan. It owns, and uses in this business, two steam ferryboats of British registry; it leases a private wharf in the City of Sault Ste. Marie, Michigan, and there maintains an office where fares are received. The Canadian license prescribes the frequency of the service and fixes the maximum fares to be charged; it also provides that the licensee shall not 'infringe any of the laws or by-laws or of the regulations' of the United States or of the State of Michigan or 'of the town of Sault Ste. Marie, U. S. A.' in reference to ferriage, 'which may be applicable to the said ferry or such portion thereof as may be within the jurisdiction of any of them.'

The City of Sault Ste. Marie, Michigan, was authorized by its charter to 'establish, license and regulate ferries to and from the city,' and to prescribe rates. The charter also provided: "The council may regulate and license ferries from the city or any place or landing therein to the opposite shore . . . and may require the payment of such reasonable sum for such license as the council shall deem proper; and may impose such reasonable terms and restrictions in relation to the keeping and management of such ferries, and the time, manner and rates of carriage and transportation of persons and property as may be

proper; and provide for the revocation of any such license, and for the punishment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries and regulating those established and licensed." Under this authority, the city adopted the ordinance in question. Section one is as follows:

"No person, persons, or company shall operate a ferryboat, or engage in the business of carrying or transporting persons or property thereon from the City of Sault Ste. Marie, Michigan, and across the St. Mary's River to the opposite shore, without first obtaining a license therefor from the Mayor and by otherwise complying with the provisions of this ordinance."

The Mayor was empowered to grant a license upon the payment of fifty dollars annually for each ferryboat engaged in such transportation, and it was further provided that, before any license should be issued, the person or company desiring the same should make application setting forth a schedule of the rates proposed to be charged within the prescribed territory. Additional provisions fixed the period and frequency of service and the rates to be charged from the licensee's dock within the city to the opposite shore. The Mayor was authorized to revoke the license if he was satisfied that any of the provisions of the ordinance were violated. After the passage of this ordinance, one Pocock, operating a ferryboat belonging to the Transit Company without a license having been obtained therefor, was arrested and fined. Alleging the purpose of the city to enforce the ordinance, and its invalidity, the Transit Company then brought this suit.

It will be observed that the question is not simply as to the power of the State to prevent extortion and to fix reasonable ferry rates from the Michigan shore; it is not as to the validity of a mere police regulation governing the manner of conducting the business in order to secure safety and the public convenience. (See *Port Richmond &c.*

Ferry Co. v. Board of Chosen Freeholders, ante, p. 317, decided this day.) The ordinance goes beyond this. The ordinance requires a municipal license; and the fundamental question is whether in the circumstances shown the State, or the city acting under its authority, may make its consent a condition precedent to the prosecution of the business. If the State, or the city, may make its consent necessary, it may withhold it. The appellee, having its domicile in Canada, is engaged in commerce between Canada and the United States. At the wharf which it leases for the purpose on the American shore, it receives and lands persons and property. Has the State of Michigan the right to make this commercial intercourse a matter of local privilege, to demand that it shall not be carried on without its permission, and to exact as the price of its consent—if it chooses to give it—the payment of a license fee?

This question must be answered in the negative. It is urged, on behalf of the city, that the State either directly or through its municipalities may establish and license ferries—may grant ferry franchises (*Fanning v. Gregoire*, 16 How. 524; *Conway v. Taylor's Executor*, 1 Black, 603; *Wiggins Ferry Co. v. East St. Louis*, 107 U. S. 365). But, since the decision in *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, it has been clear that, whatever authority the State may have for this purpose, it does not go so far as to enable the State to interdict one in the position of the appellee from conducting the commerce in which it is engaged, or justify the State in imposing exactions upon that commerce in the view that business of this character may be carried on only by virtue of its consent express or implied. In that case the ferry company was a New Jersey corporation, receiving and landing its passengers and property at its wharf in Philadelphia in substantially the same manner as the appellee transacts its business at its wharf in Sault Ste. Marie, Michigan. The court held that it was

not within the power of the State to prevent the ferry company from so doing; that this was an essential part of the interstate transportation which the State could not forbid, or burden by a privilege tax. See *Philadelphia & S. Mail Steamship Co. v. Pennsylvania*, 122 U. S. 326, 343. Referring to foreign commerce, the court said in *Crutcher v. Kentucky*, 141 U. S. 47, 57: "Would any one pretend that a state legislature could prohibit a foreign corporation,—an English or a French transportation company, for example,—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of state legislation, but within that of national legislation." Ferry transportation is placed upon the same footing in this respect by the holding in the *Gloucester Case* (*supra*, pp. 203, 205), the point of the decision being that the transportation was within the protection of the constitutional grant to Congress. "It matters not," said the court, "that the transportation is made in ferry-boats, which pass between the States every hour of the day."

The fundamental principle involved has been applied by this court in recent decisions in a great variety of circumstances, and it must be taken to be firmly established that one otherwise enjoying full capacity for the purpose cannot be compelled to take out a local license for the mere privilege of carrying on interstate or foreign commerce. *Robbins v. Shelby County Taxing District*, 120 U. S. 489, 496; *Leloup v. Mobile*, 127 U. S. 640, 645; *Stoutenburgh v. Hennick*, 129 U. S. 141, 148; *McCall v. California*, 136 U. S. 104, 109; *Norfolk &c. R. R. Co. v. Pennsylvania*, 136 U. S. 114; *Crutcher v. Kentucky*, *supra*, p. 58; *Rearick v. Pennsylvania*, 203 U. S. 507; *Western Union Tel. Co. v. Kansas*, 216 U. S. 1, 21; *Pullman Co. v. Kansas*, 216 U. S. 56;

International Text Book Co. v. Pigg, 217 U. S. 91, 109; *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229, 260; *Buck Stove Co. v. Vickers*, 226 U. S. 205, 215; *Crenshaw v. Arkansas*, 227 U. S. 389; *Minnesota Rate Cases*, 230 U. S. 352, 400; *Adams Express Co. v. New York*, 232 U. S. 14, 31, 32.

Assuming that, by reason of the local considerations pertinent to the operation of ferries, there exists in the absence of Federal action a local protective power to prevent extortion in the rates charged for ferriage from the shore of the State, and to prescribe reasonable regulations necessary to secure good order and convenience, we think that the action of the city in the present case in requiring the appellee to take out a license, and to pay a license fee, for the privilege of transacting the business conducted at its wharf, was beyond the power which the State could exercise either directly or by delegation. In this view, it is unnecessary to consider the question raised with respect to the treaty with Great Britain.

The decree restraining the enforcement of the ordinance in question as against the appellee is affirmed.

Affirmed.